


**MEMORANDUM**

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Expedited Bill 20-06, SoccerPlex – Lease Amendments

The Council President, at the request of the Maryland-National Capital Park and Planning Commission, intends to introduce Expedited Bill 20-06, SoccerPlex – Lease Amendments, on May 25, 2006. A public hearing is scheduled for June 13 at 7:30 p.m.

The memo from Planning Board Chair Berlage on ©3-6 outlines the changes in the existing lease made by the attached lease amendments. The lease has been amended twice since it was originally approved in 1999 (see Emergency Bills 21-99, 12-00, and 31-02).

This packet contains:	<u>Circle #</u>
Expedited Bill 20-06	1
Memo from Planning Board Chair	3
Planning staff memo	7
Lease showing amendments	13
Testimony of Montgomery Soccer Foundation	81
News article re Planning Board hearing	97

Expedited Bill No. 20-06  
Concerning: SoccerPlex - Lease  
Amendments  
Revised: 5-23-06 Draft No. 1  
Introduced: May 25, 2006  
Expires: November 25, 2007  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the Maryland-National Capital Park and Planning Commission

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**AN EMERGENCY ACT** to approve amendments to a certain ground lease between the Maryland-National Capital Park and Planning Commission and the Maryland Soccer Foundation Inc. for certain land at South Germantown Recreational Park

By adding to  
Laws of Montgomery County 2006

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1       **Sec. 1.       Lease Approval.** As required by state law, the County Council  
2 hereby approves the attached amendments to the ground lease for a period longer  
3 than 20 years between the Maryland-National Capital Park and Planning  
4 Commission and the Maryland Soccer Foundation Inc. for certain land at South  
5 Germantown Recreational Park.

6       **Sec. 2.       Expedited Effective Date.** The Council declares that this  
7 legislation is necessary for the immediate protection of the public interest. This  
8 Act takes effect on the date when it becomes law.

9 *Approved:*

10 \_\_\_\_\_  
George L. Leventhal, President, County Council

\_\_\_\_\_ Date

11 *Approved:*

12 \_\_\_\_\_  
Douglas M. Duncan, County Executive

\_\_\_\_\_ Date

13 *This is a correct copy of Council action.*

14 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

\_\_\_\_\_ Date

MF  
CC  
SBF  
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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Chairman, Montgomery County Planning Board

**Memorandum**

May 19, 2006

TO: George Leventhal, President  
Montgomery County Council

FROM: Derick Berlage, Chairman  
Montgomery County Planning Board

2006 MAY 19 PM 4: 52

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

SUBJECT: Amended and Restated Lease With Maryland Soccer Foundation

This memorandum transmits the Amended and Restated Lease (Lease) between M-NCPPC and the Maryland Soccer Foundation (MSF) for review and approval by the County Council. The Planning Board has had a number of work sessions on the lease and held a closed session regarding the financial information provided by MSF followed by a public work session including testimony on May 11th.

Changes in the lease were proposed by the Maryland Soccer Foundation (MSF) in order to create more capacity for games through expansion of facilities as envisioned in the original lease; incorporation of artificial turf and lighting on new fields; changes in requirements for resting fields and times of operation. The Commission has proposed changes that strengthen the reporting and oversight provisions of the lease.

The substantive changes in the lease are summarized below. Our staff will be available for discussion of all of the issues as you review this lease.

**Governance**

M-NCPPC will have a voting member of the MSF governing board. The Board will make the decision on who that person is after the lease is finalized by the County Council. (Section 23(e)).

The advisory committee of the MSF will consist of the member clubs. (Section 2 (b) page 7 and Section 13(b))

MSF will participate in the South Germantown Recreational Park advisory board when established by the Department of Parks. (Section 13(h)).

### **Purpose of Lease and Use of SoccerPlex**

The purpose of this Lease is to develop and maintain a premier facility to meet the needs of the Montgomery County and the Maryland soccer communities by leveraging the assets of both the public and the private sectors, while preserving the interests of each; to provide quality soccer fields that are accessible and affordable to the public, while assuring the financial viability of the facility. Meeting the needs of the Montgomery County and the Maryland soccer communities will be determined based on MSF's Field Usage Allocation Guidelines, with minimum criteria established by the Commission, including i) preference to upcounty, Montgomery County and Maryland recreational leagues who use the SoccerPlex during the outdoor seasons, balanced against the ability of new, viable and active clubs to gain access to the SoccerPlex, ii) payment of use fees (unless scholarships are awarded) based maintenance and operating costs, and iii) all users must agree to a form of dispute resolution between the user and the MSF. (Section 6(a))

### **Allocation of games**

Allocation criteria are enumerated in the lease and the Board will review and approve the guidelines established by MSF to implement the criteria. (Section 6 (a)).

### **Hours of Operations**

The hours of operation for the fields has been expanded to begin at 7 AM and end at 11 PM. There is a provision that requires that when scheduling games the location of the field and impact on the surrounding community will be given consideration. (Section 13(b)(9))

### **Reserve Funds**

Reserve requirements were expanded to include Capital in the amount of \$450,000, and Turf Replacement, and Operating reserves in amounts deemed sufficient by MSF. (Section 14(a)(3)).

### **Costs**

The Board will review the fees, but will not approve them. The Board is able, should they so determine, to seek funds to lower the fees. (Various Sections)

### **Operating Restrictions**

Field resting requirements, hours of operations, restrictions on number of games, and other similar operating restrictions are limited based on the maximum allowable level of traffic with regard to the road network surrounding and within the Park. (Various Sections)

### **Traffic and Parking Management Plan**

All tenants or other primary users of the Park, including the MSF and the Commission will enter into a Traffic and Parking Management Plan for the coordination of events and activities in the Park so that such use stays within the approved traffic standards. (Section 13(a))

### **Additional Improvements to SoccerPlex**

MSF can use the proceeds from revenues earned at the SoccerPlex to construct additional improvements, such as additional bleachers seats at the Championship Field, an additional indoor field, lighting and/or artificial turf for the Soccer Fields designated as Soccer Fields 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20, additional comfort stations, and outdoor picnic shelters, all subject to and in accordance with County approval and permitting processes. (Section 14(c))

### **Construction of Phase 2 Improvements**

All conditions precedent to the right of the MSF to commence Phase II construction have been met, except the amendment to public funding to shift responsibility to the Commission to relocate the Baseball Field C (which will be set off against Phase 3 infrastructure funding) and appropriation by the County Council. (Section 7(b))

### **Construction of Phase 3 Improvements**

Before it can begin construction of Phase 3, MSF must provide evidence that i) it holds sufficient funds for the payment of the cost of such construction, ii) that the Traffic Standards a) have not been exceeded as a result of Phase 2, and b) will not be exceeded as a result of Phase 3, (iii) Baseball Field C has been completed and is ready for use, and (iv) the County Council has approved the funding for Phase 3. (Section 7(c))

### **Park Maintenance Facility**

MSF shall have the right to use space in the Park Maintenance Facility without charge except for its proportionate share of the electricity. (Section 9(c))

### **MSF Reporting to Commission**

In addition to standard financial reporting to the Commission, such as audited financial statements and operating projections, each year, MSF shall make a presentation to the Planning board of its operation of the SoccerPlex during the preceding calendar year, including, i) how it is meeting the needs of the Montgomery County youth soccer programs and recreation leagues, ii) any community outreach activities, iii) fees, and iv) actual and anticipated game allocations. (Section 15)

**Default by Foundation**

Default provisions were expanded to include tightened requirement of MSF to meet the needs of the Montgomery County and the Maryland soccer communities by providing quality soccer fields that are accessible at reasonable fees to the public. A finding of the Montgomery County Planning Board that the MSF is failing to meet the stated purpose will put MSF in default. (Section 25)

M-NCPPC



Montgomery County Department of  
THE MARYLAND NATIONAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20901

WRB

Item # 12  
5-11-06

**Memorandum**

TO: The Montgomery County Planning Board

VIA: Mary Bradford, Director of Parks

FROM: Bill Mooney, Acting Deputy Director

SUBJECT: Amended and Restated Ground Lease for the operation of the SoccerPlex and South Germantown Recreational Park

Recommendation: Approval of the Restated Lease after resolution of several issues as detailed below and approval to transmit lease to the County Council for review and action.

The attached Amended and Restated Lease for the operation of the Soccerplex at South Germantown Recreational Park is submitted for approval by the Planning Board. Changes in the lease were proposed by the Maryland Soccer Foundation (MSF) in order to create more capacity for games through expansion of facilities as envisioned in the original lease; incorporation of artificial turf and lighting on new fields; changes in requirements for resting fields and times of operation. The Commission has proposed changes that strengthen the reporting and oversight provisions of the lease.

The Secretary-Treasurer received financial projections from MSF on April 27, 2005. These projections incorporate the expected financial impact of the grant funding, the proposed field development and the expanded use of fields. The Secretary-Treasurer will be reviewing the information and will provide comments regarding the financial impact of the proposed changes in a report to the Board next week.

The Board should note that the Executive Director has convened a meeting of approximately 10 clubs who are users of the SoccerPlex, which is scheduled for May 2, 2006. It is scheduled so that the final lease as it will be posted on the web can be made available to the clubs and they then have an opportunity to comment on it. If any issues raised result in changes in the recommendations, they will be provided in a subsequent memorandum for consideration at the work session.



The amended and restated lease reflects staffs' recommendations after consultation with the Planning Board on all of the issues. Staff and MSF are in agreement on all of the issues in the lease with the exception of one. In the provision of the lease which requires that the current advisory board of the MFS be maintained, staff recommends that three members be added to that board; one from the Parks and two from the community (which can be accomplished if the community member is on either the governing board or the advisory board). MSF feels that the advisory board should be comprised only of the clubs who use the SoccerPlex. (ref 2.b. and 13.f)

**Below is a summary of proposed substantive revisions:**

*Note: Many of the proposed revisions to the Lease are not included in the following summary are clean up of provisions/requirements which are no longer applicable or which have already been fulfilled.*

**Advisory Board and Community Input [2.b and 13.e].** The Advisory Board must be maintained to advise MSF on use of the Soccer Fields, Field-Use Fees and, and any other matters that impact the continued successful operations of the SoccerPlex. Board members will include representatives from the Commission, users of the SoccerPlex, including the organized soccer clubs, and neighboring communities to the Park.

**MSF Board [23.e].** MSF agrees to confer membership on its governing board by providing one voting seat to a member selected by the Commission.

**Purpose of Lease and Use of SoccerPlex [6.a].** The purpose of this Lease is to develop and maintain a premier facility to meet the needs of the Montgomery County and the Maryland soccer communities by leveraging the assets of both the public and the private sectors, while preserving the interests of each; to provide quality soccer fields that are accessible and affordable to the public, while assuring the financial viability of the facility. Meeting the needs of the Montgomery County and the Maryland soccer communities will be determined based on MSF's Field Usage Allocation Guidelines, with minimum criteria established by the Commission, including i) preference to upcounty, Montgomery County and Maryland recreational leagues who use the SoccerPlex during the outdoor seasons, balanced against the ability of new, viable and active clubs to gain access to the SoccerPlex, ii) payment of use fees (unless scholarships are awarded) based maintenance and operating costs, and iii) all users must agree to a form of dispute resolution between the user and the MSF.

**Operating Restrictions [various Sections].** Field resting requirements, hours of operations, restrictions on number of games, and other similar operating restrictions are limited based on the maximum allowable level of traffic with regard to the road network surrounding and within the Park.

**Traffic and Parking Management Plan [13.a].** All tenants or other primary users of the Park, including the MSF and the Commission will enter into a Traffic and Parking Management Plan for the coordination of events and activities in the Park so that such use stays within the approved traffic standards.

**Additional Improvements to SoccerPlex [14.c].** MSF can use the proceeds from revenues earned at the SoccerPlex to construct additional improvements, such as additional bleachers seats at the Championship Field, an additional indoor field, lighting and/or artificial turf for the Soccer Fields designated as Soccer Fields 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20, additional comfort stations, and outdoor picnic shelters, all subject to and in accordance with County approval and permitting processes.

**Construction of Phase 2 Improvements [7.b].** All conditions precedent to the right of the MSF to commence Phase II construction have been met, except the amendment to public funding to shift responsibility to the Commission to relocate the Baseball Field C (which will be setoff against Phase 3 infrastructure funding).

**Construction of Phase 3 Improvements [7.c].** Before it can begin construction of Phase 3, MSF must provide evidence that i) it holds sufficient funds for the payment of the cost of such construction, ii) that the Traffic Standards a) have not been exceeded as a result of Phase 2, and b) will not be exceeded as a result of Phase 3, (iii) Baseball Field C has been completed and is ready for use, and (iv) the County Council has approved the funding for Phase 3.

**Park Maintenance Facility [9.c].** MSF shall have the right to use space in the Park Maintenance Facility without charge except for its proportionate share of the electricity

**Sponsorships and Naming Opportunities [11].** MSF shall have the right to offer sponsorships without Commission approval, but naming rights require Commission approval.

**Licenses or Concessions [23.c].** MSF has the right to grant licenses and concessions for retail, food and other permitted uses allowed under the Lease without the necessity of obtaining the consent or permission of Commission, subject to permitting as may be required by law. The licensees or concessionaires may distribute their products anywhere within the SoccerPlex, and such products shall be superior quality and have sufficient quantity to serve the users of the SoccerPlex.

**MSF Reporting to Commission [15].** In addition to standard financial reporting to the Commission, such as audited financial statements and operating projections, each year, MSF shall make a presentation to the Planning board of its operation of the SoccerPlex during the preceding calendar year, including, i)

how it is meeting the needs of the Montgomery County youth soccer programs and recreation leagues and ii) actual and anticipated game allocations. Further, the Commission has the right to audit and inspect MSF's books under certain circumstances.

**Default by Foundation [25]**. Default provisions were expanded to include tightened requirement of MSF to meet the minimum criteria for field usage allocation. A finding of the Montgomery County Planning Board that the MSF is failing to meet the criteria will put MSF in default.

### **Other Issues:**

County Council staff in a recent memorandum circulated to Council members has raised several issues. This section of the staff report provides information of how those issues are addressed in the lease (*Council staff comments are in italics; M-NCPPC comments follow and are indented*):

*Fee schedule. MSF should submit to the Planning Board the fee schedule for the pending season at least 3-4 months before facility use agreements will be sent to leagues. Planning Board review should focus on whether fees are equitable across leagues and necessary to cover operating costs and debt. (Staff notes that if the Board determines that the fees are both equitable and necessary to cover costs, but still exorbitant, it could consider whether to recommend a County subsidy to reduce fees.)*

Section 15 (b) states in part: "On or before December 20 of each calendar year, Foundation shall provide to Commission, for review and comment, (1) operating projections for the forthcoming calendar year, (2) its Field Usage Allocation Guidelines, and Field-Use Fees for use of the Soccer Fields and for the Indoor Multi-Purpose Facility for the forthcoming calendar year, and actual usage and fees for the previous year, (3) a comparison of the past year's projections and actual figures, . . ."

The board review will result in a finding as stated in the recommendation.

*Allocation Formula. MSF should present, for Planning Board approval, a formula for calculating the number of games each league is eligible for in the coming year. Staff suggests the following: For each league with a majority County soccer players, determine what percentage that league represents of the total number of soccer players in County leagues and assign them that percentage of total games. Actually calculation of league allotments should be updated periodically (once each year?) so that new leagues have the opportunity for a greater percentage of games as they grow. This formula should assure that specific leagues are not arbitrarily favored, but would also allow new leagues an opportunity to play at the SoccerPlex. The SoccerPlex should also reserve a small number of games for programs for the economically disadvantaged. If there are no interested entities, these games can be permitted to other users.*

As described above, Section 15(b)(2) requires reporting on field use guidelines for review and comment. The lease has in section 6(3) the following criteria for field allocation: "Other than Tournament play, the majority (at least fifty-one percent (51%)) of the combined use of the Indoor Multi-Purpose Facility and the Soccer Fields shall be for sports-related activities and shall be primarily for the use of Montgomery County and Maryland soccer communities, with preference to upcounty teams for Saturday play during Outdoor Soccer Seasons. Notwithstanding, this obligation shall not apply in the event sports-related users are not contracting for use of the Indoor Multi-Purpose Facility and the Soccer Fields."

### ***Timing of Facility Use Agreements.***

*Predictability is essential – both for MSF who must book fields and for the leagues that need ample time to consider options and convene meetings of their Boards of Directors.*

- *Once fees are set and the allocation formula is used to calculate the number of games each league is entitled to, County soccer leagues should received facility use agreements well in advance of the season, with at least 30 days turn-around time. (Since the Planning Board will review the costs and allotment calculations, the leagues should have additional notice of fees and numbers of games.)*
- *If County leagues to do not return the facility-use agreements within the predetermined time period, MSF should be free to reassign time to other leagues, providing a preference to in-County leagues with a majority of County players.*

Staff agrees with this concept, which is covered in the allocation guidelines that require that users "honor the terms and conditions of contracts and meet the published deadlines." The Planning Board will review these guidelines each year.

### ***Tournaments***

*Reviews of the cost and allocation of games should also consider policies related to tournaments. Tournaments provide an opportunity for significant income and it is unclear to staff whether these opportunities should continue to be given to leagues (and if so, the Planning Board's role in determining whether the tournaments are fairly assigned to different leagues) or whether MSF should operate all tournaments and use the proceeds to help pay debt service.*

Staff concurs that the issue of tournaments is a significant issue but believes that it is addressed in the lease. MSF has the ability to schedule tournaments, which can include additional tournaments. The current tournament schedule is comprised of events with historic operators and should be dealt with between the MSF and the clubs.

*Staff recommends that a predictable schedule be established. For example*

- *September 1: MSF submits cost and allocation calculation to the Planning Board for the following fall season.*
- *Planning Board reviews fees and allocation policy by December 15.*
- *MSF submits fall facility use agreements to leagues by February 1*
- *Leagues required respond to MSF with written agreements by March 1.*
- *After March 1 MSF may contact County leagues that want more games than allotted. If no County leagues are interested in additional games, MSF may contact out-of-County leagues.*

*These dates should be set to allow MSF to fully book all fields and therefore the time table may need to be adjusted earlier to assure that MSF has sufficient time to contact alternative leagues if County leagues do not wish to use their full allocation.*

Section 15(b) (5) also requires as part of the reporting "a calendar showing the actual uses of the SoccerPlex the previous year all uses scheduled at the SoccerPlex for the upcoming year, and (6) any other information reasonably requested by Commission." It is expected that the calendar would cover these dates as described above.

Attachments:

Amended and Restated Lease  
Testimony of MSF from Board worksession

# AMENDED AND RESTATED GROUND LEASE

## TABLE OF CONTENTS

	<u>Page</u>
1. <del>Introductory Provisions</del> .....	<del>1</del>
<u>1. INTRODUCTORY PROVISIONS</u> .....	<u>5</u>
(a) Fundamental Lease Provisions .....	<del>4</del> <u>5</u>
(b) References and Conflicts .....	<del>26</del>
(c) Exhibits .....	<del>37</del>
2. <del>Definitions</del> .....	<del>3</del>
3. <del>Demise of SoccerPlex</del> .....	<del>10</del>
4. <del>Lease Term</del> .....	<del>10</del>
<u>2. DEFINITIONS</u> .....	<u>7</u>
<u>3. DEMISE OF SOCCERPLEX</u> .....	<u>15</u>
<u>4. LEASE TERM</u> .....	<u>15</u>
(a) Initial Term .....	<del>10</del> <u>15</u>
(b) Extension Terms .....	<del>10</del> <u>Term(s) 15</u>
5. <del>Rent</del> .....	<del>11</del>
6. <del>Purpose of Lease and Use of SoccerPlex</del> .....	<del>11</del>
<u>5. RENT</u> .....	<u>16</u>
<u>6. PURPOSE OF LEASE AND USE OF SOCCERPLEX</u> .....	<u>16</u>
(a) Purpose of Lease .....	<del>11</del> <u>16</u>
(b) Permitted Use .....	<del>11</del> <u>17</u>
(c) <u>Any Use Request must meet the following conditions</u> .....	<u>17</u>
(d) Constraints .....	<del>11</del> <u>18</u>
7. <del>Construction of Improvements</del> .....	<del>12</del>
8. <del>Construction of Roads in and to Park</del> .....	<del>12</del>
<u>7. CONSTRUCTION OF IMPROVEMENTS</u> .....	<u>18</u>
(a) <del>Required Road</del> <u>Phase I Construction before Opening of SoccerPlex</u> .....	<del>12</del> <u>18</u>
(b) <del>Required Road</del> <u>Phase II Construction before Opening of Phase II</u> <u>Improvements</u> .....	<del>13</del> <u>18</u>
9. <del>Maintenance and Repair</del> .....	<del>13</del>

(c)	Phase III Construction.....	19
8.	CONSTRUCTION OF ROADS IN AND TO PARK.....	19
9.	MAINTENANCE AND REPAIR.....	19
(a)	Foundation's Maintenance Responsibilities .....	1319
(b)	Commission's Maintenance Responsibilities .....	1520
(c)	Park Maintenance Facility .....	1622
10.	Signage.....	16
10.	SIGNAGE.....	22
(a)	Park Signage Guidelines .....	1622
(b)	Commission Signage .....	1722
(c)	Foundation Signage .....	1722
(d)	Way-finding Signage within Park.....	1723
(e)	Off-Park Signage .....	1723
11.	Sponsorships and Naming Opportunities.....	17
12.	Right to Enter.....	17
11.	SPONSORSHIPS AND NAMING OPPORTUNITIES.....	23
12.	RIGHT TO ENTER.....	23
(a)	By Commission.....	1723
(b)	By WSSC.....	1723
13.	Operation and Management of Soccer Facilities.....	18
13.	OPERATION AND MANAGEMENT OF SOCCER FACILITIES.....	23
(a)	Scheduling of Park Events .....	1823
(b)	SoccerPlex Usage and Scheduling and Field Resting.....	18 24
(c)	Community Soccer Fields.....	2125
(d)	Security and Traffic Control .....	2225
(e)	Commission's Obligations Regarding Trails.....	2226
(f)	Commission's Obligation's Regarding Roads and Park Construction.....	2226
(g)	Compliance with Park Regulations.....	2326
14.	Use of Proceeds from Operation of SoccerPlex .....	23
14.	USE OF PROCEEDS FROM OPERATION OF SOCCERPLEX.....	26
(a)	Priority of Use.....	2327
(b)	Irrigation Water.....	2428
(c)	Construction of Additional Improvements and Facilities.....	2428
(d)	Use of Revenues off the Premises .....	2428
(e)	Expenses of SoccerPlex .....	2528

<del>15.</del>	<del>Foundation Reporting to Commission.....</del>	<del>25</del>
<del>16.</del>	<del>Utilities.....</del>	<del>25</del>
<del>15.</del>	<del>FOUNDATION REPORTING TO COMMISSION.....</del>	<del>28</del>
<del>16.</del>	<del>UTILITIES.....</del>	<del>29</del>
	(a) Electricity.....	<del>25</del> <u>29</u>
	(b) Water and Sewer.....	<del>25</del> <u>30</u>
<del>17.</del>	<del>Stream and Ground Water Monitoring.....</del>	<del>26</del>
<del>18.</del>	<del>Hazardous Materials.....</del>	<del>26</del>
<del>17.</del>	<del>STREAM AND GROUND WATER MONITORING.....</del>	<del>30</del>
<del>18.</del>	<del>HAZARDOUS MATERIALS.....</del>	<del>30</del>
	(a) Commission's Responsibilities.....	<del>26</del> <u>30</u>
	(b) Foundation's Responsibilities.....	<del>27</del> <u>31</u>
<del>19.</del>	<del>Foundation's Insurance.....</del>	<del>28</del>
<del>19.</del>	<del>FOUNDATION'S INSURANCE.....</del>	<del>32</del>
	(a) Required Insurance.....	<del>28</del> <u>32</u>
	(b) Policy Requirements.....	<del>29</del> <u>33</u>
	(c) Commission's Right to Procure.....	<del>30</del> <u>34</u>
<del>20.</del>	<del>Commission's Insurance.....</del>	<del>30</del>
<del>20.</del>	<del>COMMISSION'S INSURANCE.....</del>	<del>34</del>
	(a) Property Insurance.....	<del>30</del> <u>34</u>
	(b) Self Insurance.....	<del>30</del> <u>34</u>
<del>21.</del>	<del>Indemnity.....</del>	<del>30</del>
<del>21.</del>	<del>INDEMNITY.....</del>	<del>34</del>
	(a) By Foundation.....	<del>30</del> <u>34</u>
	(b) By Commission.....	<del>31</del> <u>35</u>
<del>22.</del>	<del>Condemnation/Casualty.....</del>	<del>31</del>
<del>22.</del>	<del>CONDEMNATION/CASUALTY.....</del>	<del>35</del>
	(a) Condemnation.....	<del>32</del> <u>36</u>
	(b) Casualty.....	<del>32</del> <u>36</u>
<del>23.</del>	<del>Assignment, Subletting and Change of Corporate Structure.....</del>	<del>33</del>
<del>23.</del>	<del>ASSIGNMENT, SUBLETTING AND CHANGE OF CORPORATE STRUCTURE.....</del>	<del>37</del>



(a)	Assignment by Commission .....	3337
(b)	Assignment by Foundation .....	3438
(c)	Licenses or Concessions .....	3439
(d)	Foundation 501(c)(3) Status .....	3539
(e)	Dissolution of Foundation-35 Board .....	39
24.	Mortgage of Foundation's Interest in Indoor Multi Purpose Facility .....	35
24.	<u>MORTGAGE OF FOUNDATION'S INTEREST IN INDOOR MULTI-PURPOSE FACILITY</u> .....	40
(a)	Foundation's Right to Mortgage .....	3540
(b)	Second Mortgage .....	3641
(c)	Leasehold Mortgagee Right to Notice and Cure .....	3742
(d)	Commission Right to Notice and Cure of Leasehold Mortgage Default .....	3742
(e)	Commission Right to Cure After Second Notice .....	3843
(f)	Leasehold Mortgagee as Holder of Foundation's Interest .....	3944
(g)	Certain Restrictions During Leasehold Mortgage .....	3944
(h)	Lease Modifications for Financing .....	3944
(i)	Notice of Mortgages .....	4045
(j)	Refinancing .....	4045
25.	Default by Foundation .....	40
25.	<u>DEFAULT BY FOUNDATION</u> .....	45
(a)	Events of Default .....	4045
(b)	Notice of Default .....	4146
(c)	Curing of Default .....	4146
(d)	Commission's Remedies Other than Termination .....	4146
(e)	Termination .....	4246
(f)	Foundation's Obligations with Respect to Premises .....	4247
(g)	Commission's Remedies with Respect to Premises .....	4247
26.	Default by Commission .....	42
26.	<u>DEFAULT BY COMMISSION</u> .....	47
(a)	Commission Default .....	4247
(b)	Foundation's Remedies .....	4347
(c)	Budget Appropriations .....	4348
27.	Estoppel Certificates .....	43
28.	Covenant not to Compete .....	43
29.	Taxes and Other Impositions .....	44
30.	Ownership of Park .....	44
31.	Quiet Enjoyment .....	44

32.	Notices .....	44
33.	Recording .....	44
34.	Expiration or Termination of the Lease Term .....	45
27.	ESTOPPEL CERTIFICATES .....	48
28.	COVENANT NOT TO COMPETE .....	48
29.	TAXES AND OTHER IMPOSITIONS .....	48
30.	OWNERSHIP OF PARK .....	48
31.	QUIET ENJOYMENT .....	49
32.	NOTICES .....	49
33.	RECORDING .....	49
34.	EXPIRATION OR TERMINATION OF THE LEASE TERM .....	49
	(a) Surrender .....	4549
	(b) Holding Over .....	4550
35.	Miscellaneous Provisions .....	45
35.	MISCELLANEOUS PROVISIONS .....	50
	(a) Consents and Approvals .....	4550
	(b) Consents and Approvals Not Unreasonably Withheld .....	4650
	(c) No Broker .....	4650
	(d) Responsibility for Acts of Others .....	4651
	(e) Limitation of Commission's Liability .....	4651
	(f) Limitation of Foundation's Liability .....	4651
	(g) No Partnership .....	4651
	(h) Time of the Essence .....	4651
	(i) Force Majeure .....	4751
	(j) Non-Discrimination .....	4752
	(k) Invalidity of Particular Provisions .....	4752
	(l) Gender and Number .....	4752
	(m) Governing Law .....	4752
	(n) Headings .....	4852
	(o) Counterpart Copies .....	4852
	(p) Binding Effect .....	4852
	(q) Entire Lease .....	4852
	(r) Limitations on Commission Responsibilities and Obligations .....	4852

## Exhibits

(s) Ratification of Lease.....53

### EXHIBITS

- Exhibit A. Site Plan of South Germantown Recreational Park  
[§§ 1(a)(1) and 2(~~wwwxx~~)]
- Exhibit A-1. Legal Description of Premises [§ 2(~~hhhiij~~)]
- Exhibit B. List of SoccerPlex Improvements and Park Infrastructure  
Improvements [§§ 2(~~wwwxx~~) and 2(~~eeeggg~~)]
- Exhibit C. Certificate of Commencement [§ 4(a)]
- Exhibit D. [Intentionally Omitted]
- Exhibit E. Portions of Water and Sewer Infrastructure North of Schaeffer  
Road to be Maintained by Foundation and Commission [§ 9]
- Exhibit F. [Intentionally Omitted]
- Exhibit G. Transportation Management and Traffic Operations Plan [§ 10(e)]
- Exhibit H-1. SoccerPlex Traffic Generation Rates [§§ 13(d)(2) and 13(f)]
- Exhibit H-2. Non-Soccer Facility Traffic Generation Rates [§§ 13(a) and 13(f)]
- Exhibit H-3. Traffic Counting Procedures [§§ 13(d)(2)]
- Exhibit I. [Intentionally Omitted]
- Exhibit J. Reserve Fund Payment Schedule [§ 14(a)(4)]
- Exhibit K. Water Monitoring Program [§ 17]
- Exhibit L. [Intentionally Omitted]
- Exhibit M. Commission Self Insurance Agreement [§ 20]
- Exhibit N. Description of the Indoor Multi-Purpose Facility Area [§ 24(a)]
- Exhibit O ~~New Lease Provisions, Traffic Standards~~ [§§ ~~23(b) and~~  
~~25(e2(www))~~] [Note: This is the only exhibit that was not  
included in the Existing Lease.]

### AMENDED AND RESTATED GROUND LEASE

This Amended and Restated Ground Lease (this "Lease") is between MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a body corporate and politic ("Commission"), and MARYLAND SOCCER FOUNDATION, INC., a Maryland non-profit corporation ("Foundation"), and amends and restates a Ground Lease Agreement (the "Basic Lease"), dated June 28, 1999, between the Commission and the Foundation, as amended by an Amendment to Ground Lease Agreement (the "First Amendment"), a Second Amendment to Ground Lease Agreement (the "Second Amendment"), dated June 15, 2000, and a Third Amendment to Ground Lease Agreement (the "Third Amendment"), dated October 29, 2002 (the "Third Amendment"), (together with the Basic Lease, the First Amendment, the Second Amendment, and the Third Amendment, the "Original Lease").

### WITNESSETH

WHEREAS, Commission and Foundation entered into the Original Lease, covering approximately 162 acres in the South Germantown Recreational Park, Germantown, Maryland; and

WHEREAS, the parties wish to amend and restate the Original Lease to correct, modify or clarify certain of its provisions.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend and restate the Original Lease as follows (terms used herein and not elsewhere defined herein are used as defined in Section 2):

**1. Introductory Provisions.**

(a) Fundamental Lease Provisions. Certain fundamental Lease provisions are presented in this Section in summary form solely to facilitate convenient reference by the parties hereto, and while they may be material conditions or provisions, enumeration herein is not indication of a definition of a material condition or provision:

- |                   |  |   |
|-------------------|--|---|
| 1.                | <u>Premises</u>  | Approximately 162   |
| acres in          | [See Section 3<br>the South Germantown<br>Recreational Park,<br>Germantown, MD   | and Exhibit A]  |
| 2.                | <u>Lease Commencement Date</u>   | December 2, 2000 [See Secti   |
| 3.                | <u>Lease Term</u>  | 25 years  |
| commencing on the | [See Section 4]<br>Lease Commencement Date,<br>plus two (2) optional extension terms,<br>the first extension term of five (5)<br>years and the second extension term of<br>ten (10) years, but in no event shall the<br>Lease Term exceed 40 years |   |
| 4.                | <u>Base Annual Rent</u>  | \$1.00 [See   |
| Section 5]        |  |   |
| 5.                | <u>Commission's Notice Address</u>   | The Maryland-National Capital<br>[See Section 32]<br><u>Park &amp; Planning Commission</u><br><u>9500 Brunett Avenue</u><br><u>Silver Spring, Maryland 20901</u><br><u>Attention: Director of Parks</u><br><br><u>with a copy to:</u><br><br><u>The Maryland-National Capital</u><br><u>Park &amp; Planning Commission</u><br><u>6611 Kenilworth Avenue</u> |

Riverdale, Maryland 20737  
Attention: General Counsel

~~with a copy to:~~

~~The Maryland National Capital  
Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910  
Attention: Director of Park & Planning~~

6. Foundation's Notice Address  
Section 32]

Maryland Soccer Foundation, Inc. [See

~~P.O. Box 30202  
Bethesda, Maryland 20827~~

18031 Central Park Circle  
Boys, MD 20841

with a copy to:

Maryland Soccer Foundation, Inc.  
4903 Auburn Avenue  
Bethesda, Maryland 20814

and a copy to :

~~Shulman, Rogers, Gandal, Pordy & Ecker, P.A.  
11921 Rockville Pike, Third Floor  
Rockville, Maryland 20852~~

Arent Fox PLLC  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339

Attn: ~~Lawrence A. Shulman, Esquire~~ Sean W. Glynn

7. Lease Execution Date

Date of execution of the Lease by the  
last party to execute the Lease

(b) References and Conflicts. References appearing in Section 1(a) are intended to designate some of the other places in the Lease where additional provisions applicable to the particular fundamental Lease provisions appear. These references are for convenience only and shall not be deemed all inclusive. Each reference in this Lease to any of the fundamental Lease provisions contained in Section 1(a) shall be construed to incorporate all of the terms provided for under such provisions, and such provisions shall be read in conjunction with all other provisions of this Lease applicable thereto. If there is any conflict between any of the fundamental Lease provisions set forth in Section 1(a) and any other provisions of the Lease, the latter shall control.

(c) Exhibits. The following drawings and special provisions are attached hereto as exhibits and hereby made a part of this Lease:

- Exhibit A. Site Plan of South Germantown Recreational Park  
[§§ 1(a)(1) and 2(~~wwwxx~~)]
- Exhibit A-1. Legal Description of Premises [§ 2(~~hhhjjj~~)]
- Exhibit B. List of SoccerPlex Improvements and Park Infrastructure  
Improvements [§§ 2(~~xx~~) and 2(~~eeeqqq~~)]
- Exhibit C. Certificate of Commencement [§ 4(a)]
- Exhibit D. [Intentionally Omitted]
- Exhibit E. Water and Sewer Infrastructure North of Schaeffer  
Road to be Maintained by Foundation and Commission [§ 9]
- Exhibit F. [Intentionally Omitted]
- Exhibit G. Transportation Management and Traffic Operations Plan [§ 10(e)]
- Exhibit H-1. SoccerPlex Traffic Generation Rates [§§ 13(d)(2) and 13(f)]
- Exhibit H-2. Non-Soccer Facility Traffic Generation Rates [§§ 13(a) and 13(f)]
- Exhibit H-3. Traffic Counting Procedures [§§ 13(d)(2)]
- Exhibit I. [Intentionally Omitted]
- Exhibit J. Reserve Fund Payment Schedule [§ 14(a)(4)]
- Exhibit K. Water Monitoring Program [§ 17]
- Exhibit L. [Intentionally Omitted]
- Exhibit M. Commission Self Insurance Agreement [§ 19]
- Exhibit N. Description of the Indoor Multi-Purpose Facility Area [§ 24(a)]
- Exhibit O. ~~New Lease Provisions~~Traffic Standards [§§ 23(b) and 25(e2(~~www~~))] **[Note: This is the only exhibit that was not included in the Existing Lease.]**

2. **Definitions**. For purposes of this Lease, Commission and Foundation hereby agree that the following terms shall have the indicated meanings:

(a) **"Additional Rent"** means all sums of money or charges required to be paid by Foundation to Commission under this Lease other than Base Annual Rent, whether or not such sums or charges are designated as "Additional Rent".

(b) **"Advisory Committee"** means the ~~SoccerPlex~~ Advisory Committee; appointed by the Planning Board of Commission established by the governing board of the Foundation in its bylaws, to advise Foundation and Commission on non-Foundation use of the Soccer Fields, Field-Use Fees and the process for determining Soccer Field usage allocation, all as required by the PDF Use Fees, and any other matters of interest to the Foundation that impact the continued successful operations of the SoccerPlex while considering its impact on neighboring communities, which Committee shall be activated and maintained, and shall meet no less than quarterly each year beginning within sixty (60) days of the Effective Date.

(c) **"Affiliated Organization"** means ~~an organization which pays an Affiliated Organization Assessment to Foundation.~~[Intentionally deleted.]

(d) **"Affiliated Organization Assessment"** means ~~that annual assessment charged by Foundation for affiliation with the Foundation, as may be established by Foundation and submitted to Commission for review and comment from time to time, pursuant to Section 15 of this Lease.~~ [Intentionally deleted.]

(e) **"Base Annual Rent"** shall have the meaning set forth in Section 1(a)(4).

(f) **"Baseball/Softball Fields"** means the fields in the Park designated by the Commission for use for the playing of baseball and/or softball by the public. The Baseball/Softball Fields are shown as Fields C, D, E and F on the attached Exhibit A.

(g) **"Business Day"** means any Monday through Friday, except any Commission-authorized holiday. On or before January 1 of each calendar year, or as soon as practicable after adoption by Commission, Commission shall provide, in writing, its list of holidays to Foundation. If Commission fails to timely provide such list, the Commission-authorized holidays for the prior calendar year shall be deemed to be the Commission-authorized holidays for the forthcoming calendar year.

(h) **"Capital Improvements"** means the Indoor Multi-Purpose Facility and related improvements and the ~~Improvements listed in Section 14(a)(1) only.~~ following improvements, only:

(1) Subject to and in accordance with the approval and permitting processes established for installation of such improvements in Montgomery County, the installation of lighting and/or synthetic turf for the Soccer Fields designated as Soccer Fields 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20 on Exhibit A;

(2) The installation of additional bleacher seats around the Championship Field so that the total number of bleacher seats around the Championship Field is up to 7,500, but in no event more than the maximum number allowable under the Traffic Standards;

(3) The construction of one additional soccer field in the Indoor Multi-Purpose Facility; and

(4) The installation or construction of such improvements that are intended to improve the use of the Soccer Fields for the users (such as additional comfort stations, storage facilities, and additional outdoor picnic shelters); provided however, such improvements are not anticipated to allow for traffic in excess of the Traffic Standards.

(i) **"Capital Repairs"** means those repairs and replacements to the Capital Improvements and any Improvements Foundation is obligated to maintain under Section 9 of this Lease, which will have a useful life beyond the year in which the improvement, repair or replacement is made or which will prolong the life of the SoccerPlex, based upon generally accepted accounting principles, consistently applied.

(j) **"Casualty"** means a fire or other casualty which damages or destroys the SoccerPlex Improvements and/or the Park Infrastructure Improvements.

(k) **"Central Park"** means the area of the Park within the ~~Loop Road~~ Central Park Circle.

(l) **"Central Park Circle"** means the road between the Premises and the central park area of the Park, shown on the attached Exhibit A.

(m) **"Certificate of Commencement"** means the certificate, in the form of the attached Exhibit C, to be executed by the parties pursuant to Section 4(a) of this Lease.

(nn) **"Championship Field"** means that Soccer Field located in the SoccerPlex and designated by Foundation as the Championship Field with bleacher seating for up to ~~3,200 people~~ 7,500 people, but in no event greater than an amount that would violate the Traffic Standards. The Championship Field is shown as Field 11 on the attached Exhibit A.

(oo) **"Comfort Stations"** means those fully-enclosed permanent facilities located in the Premises and serving the SoccerPlex, containing restrooms and related equipment (shown as Comfort Stations 1 through 4 on the attached Exhibit A).

(pp) **"Commission"** means the Maryland-National Capital Park and Planning Commission, a body corporate and politic created and existing under the laws of the State of Maryland with the full legal right, power and authority to enter into agreements for the development, maintenance and operation of park facilities in Montgomery County, Maryland.

(qq) **"Community Facilities"** means those facilities and areas to be provided in the Park for community and regional use that are ~~not revenue producing as authorized in Maryland State Code Ann. Article 28, §6-101, (e.g., playgrounds, picnic areas, ballfields)~~ managed and operated by the Commission.

(rr) **"Community Soccer Fields"** means soccer fields designated for use and enjoyment by the public, and shown as Fields A and B on the attached Exhibit A. The Community Soccer Fields are not "Soccer Fields" for purposes of this Lease.

(ss) **"Contractor"** means an individual, firm, corporation or other entity awarded a contract for the construction in the Park by Commission or Foundation.

(st) **"Cost of Construction"** means the cost of the design, permitting and construction of the ~~Indoor Multi-Purpose Facility and related improvements and the Capital Improvements listed in Section 14(a) hereof, which are,~~ limited to the following:

(1) (i) — construction costs covered under a general contract of construction

(2) (ii) — site improvements for the building including site grading and pad preparation, sidewalks, landscaping, signage, utilities and phone systems



(3) ~~(iii)~~—fixtures and equipment to be located within the building or on the adjacent exterior plaza area,

(4) ~~(iv)~~—interest during the period of construction

(5) ~~(v)~~—all design and consulting services required to design and construct the improvements above

(6) ~~(vi)~~—cost of water for irrigation of Soccer Fields during construction.

“Cost of Construction” shall not include any fees, compensation or other amounts paid to any entity controlled by Foundation, which are not bona fide and commercially reasonable or which are in excess of those which would be payable in an arm’s length relationship.

~~(tu)~~ ~~“Council” means the County Council of Montgomery County, Maryland.~~  
~~(u)~~ ~~“County” means the County Council of Montgomery County, Maryland.~~

(v) “County” means Montgomery County, Maryland.

~~(w)~~ “Days” means calendar days, unless specific reference is made to Business Days.

~~(wx)~~ “Director of Park and Planning Parks” means the Director of Park and Planning Parks for the Commission Montgomery County Department of Park or his/her designee.

~~(xy)~~ “Event of Default” shall have the meaning set forth in Section 25(a).

~~(yz)~~ “Extension Term(s)” means two (2) optional terms following the Initial Term, the first such extension term for five (5) years and the second such extension term for ten (10) years; provided, however, that (1) the Extension Terms shall be granted so long as there is no Event of Default with respect to the Foundation under the terms of the Lease at the time such Extension Term is to commence, and (2) the second Extension Term shall be less than ten (10) years if necessary to make the total Lease Term a forty (40) year period, but no more.

~~(zaa)~~ “Field-Use Fee” means that fee as may be established by Foundation from time to time, and charged by Foundation to persons who are not Affiliated Organizations for using a Soccer Field in the SoccerPlex.

~~(aabb)~~ “Field Usage Allocation Guidelines” means the policies, guiding principles and criteria for permitting Soccer Fields at the SoccerPlex that are established and adopted by the Foundation in order to meet the purposes of the Lease as set forth in Section 6 herein.

~~(cc)~~ “Foundation” means the Maryland Soccer Foundation, Inc., a Maryland non-profit corporation, organized as a 501(c)(3) corporation, consisting of certain soccer organizations and others.

(b**b**d**d**) **"Governmental Authorities"** means all public officials, agencies, municipalities, counties and courts having jurisdiction over the Park.

(e**e**e**e**) **"Hazardous Material"** means any hazardous or toxic substance, material, or waste including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172. 101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable federal, state, or local law, ordinance, or regulation including, but not limited to, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund"), the Clean Air Act, and the Clean Water Act.

(d**e**f**f**) **"Hours of Operation"** means the time period when the SoccerPlex is open to the public.

(e**e**g**g**) **"Improvements"** means the Park Infrastructure Improvements and the SoccerPlex Improvements.

(f**f**h**h**) **"Indoor Multi-Purpose Facility"** means that building located in the SoccerPlex initially containing two (2) soccer fields, and with the potential to contain a third (3<sup>rd</sup>) soccer field, subject to Council approval of such third (3<sup>rd</sup>) field through an amendment to the PDF.

(g**g**i**i**) **"Indoor Multi-Purpose Facility Area"** means the area within the Premises which is described on the attached Exhibit N.

(h**h**j**j**) **"Initial Term"** means the period commencing on the Lease Execution Date and ending December 31, 2025, which is twenty-five (25) years after the Lease Commencement Date ~~(in accordance with Md. Ann. Code, Art. 28, § 5-111 (1981))~~ plus, if the ~~Lease Commencement Date is other than the first (1st) day of a calendar month,~~ plus the number of days from the day of the month on which the Lease Commencement Date falls to the last day of such month.

(i**i**k**k**) **"Institutional Lender"** means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a pension or retirement fund, an insurance company organized and existing under the laws of the United States or any state thereof, a real estate investment trust existing in compliance with Sections 856 through 860 of the Internal Revenue Code of 1986, as amended; provided, that each of the above entities shall qualify as an Institutional Lender within the provisions of this definition only if it (1) is qualified to do business in the State of Maryland, (2) has a net worth of not less than \$100,000,000, determined in accordance with generally accepted accounting principles, as reflected in its most recent annual financial statements, which financial statements are audited by a nationally recognized independent accounting firm and delivered to Commission for review, and (3) is approved by Commission's Secretary-Treasurer, which approval shall not be unreasonably withheld and shall be transmitted to Foundation within ten (10) business days after Foundation's request therefor. "Institutional Lender" shall also mean

any other entity meeting the criteria set forth in clauses (1), (2) and (3) above. Notwithstanding anything contained in this Lease to the contrary, the term "Institutional Lender" shall also include any governmental or quasi-governmental entity or authority that issues bonds or similar evidence of indebtedness for the purpose of funding, directly or indirectly, any Leasehold Mortgage - Secured Debt.

(jjll) "Laws" means any and all applicable laws, orders, ordinances, codes and regulations, including, without limitation, all zoning, subdivision, building and land use laws, orders, ordinances and regulations of any and all courts and governmental bodies, agencies and authorities having jurisdiction over the Park, including, without limitation, all zoning, subdivision, building and land use laws.

(kkmm) "Lease" means this Amended and Restated Ground Lease Agreement.

(llnn) "Lease Commencement Date" shall have the meaning set forth in Section 1(a)(2).

(mmoo) "Lease Term" means the Initial Term and, if exercised, the Extension Term(s), not to exceed a cumulative total of forty (40) years.

(nnpp) "Lease Year" means an annual period (provided that the first Lease Year may exceed one calendar year in length), with the first Lease Year commencing on the Lease Commencement Date and lasting one full year plus, if the Lease Commencement Date is not the first day of a month, the number of days from the Lease Commencement Date until the end of that month, the second Lease Year commencing the following day, and each subsequent Lease Year commencing on the anniversary of such day. The first Lease Year being December 2, 2000 through December 31, 2001, and each subsequent Lease Year running from January 1 through December 31 of the same year; provided however, the final Lease Year may be shortened because the Lease Term may not exceed a cumulative total of forty (40) years.

(oegg) "Leasehold Mortgage" means any mortgage, deed of trust or other similar security agreement covering Foundation's leasehold interest in the Facility, that are Premises that is permitted by Section 24(a) of this Lease.

(pprr) "Leasehold Mortgagee" means any mortgagee or beneficiary under a Leasehold Mortgage.

(qqss) "Leasehold Mortgage-Secured Debt" means any debt secured by a Leasehold Mortgage.

(rr) ~~"Loop Road" means the road between the Premises and the central park area of the Park, shown on the attached Exhibit A.~~ (sstt) "Major Taking" means a taking or condemnation, as a result of the exercise of any power of eminent domain or any purchase in lieu thereof, of all of the Premises or a portion thereof such that Foundation, in its reasonable business judgment, determines it is incapable of continuing its operations on the remaining Premises.

(~~ttuu~~) **"Minor Taking"** means a taking or condemnation, as a result of the exercise of any power of eminent domain or any purchase in lieu thereof, of a portion of the Premises such that Foundation, in its reasonable business judgment, determines it is capable of continuing its operations on the remaining Premises.

(~~uuyy~~) **"Notice"** means any written notice, demand, request or other instrument which may or is required or permitted to be given from one party to another under this Lease by either (~~i1~~) hand-delivery (with a receipt therefor), (~~ii2~~) delivery by a nationally-recognized courier service with a reliable tracking-delivery system, or (~~iii3~~) mailing through the United States Mail (Registered or Certified), postage prepaid, return receipt requested.

(~~vvww~~) **"Outdoor Soccer Seasons"** means (i) late August through November 30, and (ii) early March through June 30, of any year.

(~~wwwx~~) **"Park"** means that 655± acres of land in that area currently known as South Germantown Recreational Park located in Germantown, Montgomery County, Maryland and more particularly described in the Park Master Plan Amendment (as may be amended), and as shown on the Site Plan attached hereto as Exhibit A.

(~~xyyy~~) [Intentionally deleted.]

(~~zz~~) **"Park Infrastructure Improvements"** means the items all or any portion of which are to be paid for by Commission, as shown on the attached Exhibit B, as the same may be amended from time to time in accordance with Section 35(a).

(~~yyaaa~~) **"Park Maintenance Facility"** means the maintenance building, support buildings and facilities and yard that has been or is to be constructed by Commission in the Park, but not on the Premises, to be used by Commission and Foundation in connection with their maintenance activities.

(~~zzbbb~~) **"Parking Areas"** means those areas within the Premises designated for the parking of motorized vehicles for use in connection with the SoccerPlex.

(~~aaaccc~~) **"PDF"** means a budget appropriation document approved by the Council to authorize the expenditure of funds for the design and construction of the Park, and setting other criteria for development of the Park.

(~~bbbdd~~) **"Permittee"** means any person or organization granted by ~~Commission~~Foundation a permit to use a Soccer Field during the Hours of Operation, subject to the terms of this Lease.

(~~eeeeee~~) **"Phase I"** means that period of time from the commencement of construction of the following Improvements until the commencement of Phase II: the Indoor Multi-Purpose Facility, the Championship Field (Field 11 on the attached Exhibit A), sixteen (16) additional Soccer Fields (Fields 3 through 17, 21 and 22 on Exhibit A), two (2) ~~Community Soccer Fields~~soccer fields constructed for the use of the community (Fields A and B on Exhibit A), one Baseball/Softball Field (Field D on the attached Exhibit A), a temporary parking lot serving Field D, and certain other Park Infrastructure Improvements.

(~~dddf~~) **"Phase II"** means that period of time from the commencement of construction of the next three (3) Soccer Fields (Fields ~~18, 19~~ 18, 19 and 20 on the attached Exhibit A), ~~and a portion of another Parking Area (the Field 18- 22 Parking Area on the attached Exhibit A), and relocation of one (1) Baseball/Softball Field (Field C on the attached Exhibit A), until the commencement of Phase III.~~

(~~eeeg~~) **"Phase III"** means that period of time from the commencement of construction of the next two (2) Soccer Fields and one (1) Parking Area (Fields 1 and 2 and the Field 1 and 2 Parking Area on the attached Exhibit A), ~~and one (1) Baseball/Softball Field provided however, Fields 1 and 2 may be redesigned, subject to the appropriate governmental approvals and permits, to allow for a single surface that can accommodate both Fields 1 and 2,~~ and one (1) Parking Area (Field C and Field C and D permanent Parking Area on Exhibit A).

(~~fff~~) **"Play Opportunity Capacity"** means the equivalent of five (5) games per Soccer Field per weekend day, it being understood that the Play Opportunity Capacity may be averaged among Soccer Fields, as, for example, with six (6) games being played on one Soccer Field, and four (4) games played on another.

(~~hhh~~) **"Play Opportunity Capacity"** [Intentionally deleted.]

(~~gggii~~) **"Pledge-Secured Debt"** [Intentionally omitted.]

(~~hhhjj~~) **"Premises"** means the approximately 162 acres of park land, more particularly described on the attached Exhibit A-1 and shown shaded on the attached Exhibit A, together with all buildings, structures and other improvements now or hereafter located on said land, and also together with all easements, rights-of-ways, licenses, and appurtenances appertaining to said land; provided, however, that notwithstanding anything to the contrary in this Lease, (~~i~~) Soccer Fields 18, 19 and 20 (shown on the attached Exhibit A) and the area of the Park designated as Phase II on the attached Exhibit A shall not be part of the Premises until construction of Phase II is commenced, and (~~ii~~) Soccer Fields 1 and 2 (shown on the attached Exhibit A) and the area of the Park designated as Phase III on the attached Exhibit A shall not be part of the Premises until construction of Phase III is commenced, subject to Section 9(b)(~~vi~~) (B) and (C) of this Lease.

(~~kkkk~~) **"Project"** means the Improvements to the Park funded pursuant to PDF 998712 and PDF 998729.

(~~jjjlll~~) **"Pumping Station"** means the sanitary sewer force main pumping station located within the Loop Road Central Park Circle.

(~~kkkmmm~~) **"Rent"** means all Base Annual Rent and Additional Rent payable by Foundation to Commission under this Lease.

(~~llnnn~~) **"Reserve Fund"** shall have the meaning set forth in Section 14(a)(43).

(~~mmmmooo~~) **"Soccer Fields"** means those areas of the SoccerPlex designated for the playing of soccer, exclusive of the Indoor Multi-Purpose Facility. ~~The term Soccer Field~~

~~does not include the Community Soccer Fields (, of which the Foundation has constructed (or will construct) and/or the maintenance of which Foundation has assumed (or will assume) responsibility, including Fields A and B on the attached Exhibit A).~~

(~~nnppp~~) **"SoccerPlex"** means the Premises and all SoccerPlex Improvements and Park Infrastructure Improvements on the Premises.

(~~ooooqq~~) **"SoccerPlex Improvements"** means the items which ~~are to be paid for entirely by the~~ Foundation, ~~has assumed (or will assume) responsibility for payment as shown on the attached Exhibit B, as the same may be amended from time to time in accordance with Section 35(a).~~

(~~ppp~~) ~~"Spine Road"~~ **"Germantown Park Drive"** means the internal Park road from Maryland Route 118 to the ~~Loop Road~~ Central Park Circle.

(~~qqssss~~) **"Storm Water Management Facilities"** means those facilities located on or adjacent to the Park and used for the purposes of quantity and quality control of storm water.

(~~rrrrttt~~) **"Temporary Taking"** means a temporary taking or condemnation of all or any portion of the SoccerPlex as a result of the exercise of any power of eminent domain, or purchase in lieu thereof.

(~~ssssuuu~~) **"Tournament"** means an organized soccer competition which utilizes more than seventy-five percent (75%) of the ~~Play Opportunity Capacity~~ playing capacity of the Soccer Fields for a period of no more than three (3) days, unless a fourth (4<sup>th</sup>) day is ~~approved, in writing, by the Planning Board of the Commission~~ does not interfere with regularly scheduled play.

### **3. — Demise of SoccerPlex:**

(~~vvv~~) **"Traffic and Parking Management Plan"** means that upon the availability of all uses planned for the Park, a plan to be coordinated with and entered into by all tenants and other primary users in the Park, including the Foundation and the Commission, to ensure that traffic generated within the Park upon full utilization thereof does not exceed Traffic Standards and available parking spaces in the Park. The Traffic and Parking Management Plan shall be prepared and coordinated by the Commission. The Commission acknowledges that all tenants and facilities in the Park managed and/or maintained by the Parks Department will be subject to the Traffic and Parking Management Plan and that it will require the provision for a Traffic and Parking Management Plan to be included in all of its Leases, Operating Agreements, other contracts and/or other arrangements for use of the Park with all tenants and other primary users in the Park, including the Swim Center, the Tennis Center, and the Golf Driving Range. "Primary users," as used in this Lease, means the Commission and any parties to whom the Commission has directly granted rights to use the Park.

(~~www~~) **"Traffic Standards"** means the maximum allowable level of traffic, and the flow thereof with regard to the road network surrounding and within the Park, which has

been established by the Council as part of the County's Annual Growth Policy as set forth on the attached Exhibit O.

**3. Demise of SoccerPlex.** Commission leases to Foundation and Foundation hereby leases from Commission the Premises for the Lease Term, Rent, and upon the terms, covenants, and conditions set forth herein. As an appurtenance to the Premises, Foundation, its agents, employees, contractors, subtenants, licensees and invitees shall have the nonexclusive right to use the portions of the Park and the Park Infrastructure Improvements serving or providing ingress and egress to the SoccerPlex (including, without limitation, the ~~Spine Road~~Germantown Park Drive, the ~~Loop Road~~Central Park Circle, the Parking Areas, the Comfort Stations, asphalt trails and hiker/biker trails) during all Hours of Operation of the SoccerPlex and at all other times, when reasonable or necessary to exercise its rights and perform its maintenance obligations under this Lease, provided, however, that such access shall not be deemed an exception to or extension of the Hours of Operation.

**4. Lease Term.**

(a) **Initial Term.** The Lease Term shall consist of an Initial Term and any Extension Terms exercised by Foundation or any permitted successor or assign. ~~Within thirty (30) days after the~~The Lease Commencement Date, has been established by Foundation and Commission ~~shall execute as December 2, 2000, and as such, the parties have executed a~~ Certificate of Commencement in the form of Exhibit C.

(b) **Extension Term(s).** If ~~(i)~~ this Lease has not been terminated sooner as provided herein, ~~and (ii)2 there is no Event of Default with respect to the Foundation is not then in default under this Lease, and (iii) Foundation is meeting the needs of the soccer community,~~ Foundation shall have the option(s) ("Extension Option(s)") to extend this Lease for two (2) consecutive additional Extension Term(s) as set forth in Section 2(z) herein. Should Foundation, in Foundation's sole discretion, elect not to extend this Lease, then Foundation shall provide Commission with written notice of such election not later than one (1) year before the date of expiration of the Lease Term, failing which Foundation shall be deemed to have exercised the Extension Option.

~~For purposes of this Section 4(b), Foundation shall be deemed to be meeting the needs of the soccer community if Foundation has not, during the last three (3) years, (i) received notice from Commission that it is not operating the SoccerPlex in general accordance with the Soccer Field allocation guidelines submitted to Commission pursuant to Section 15, and (ii) failed to correct the deficiencies cited in such notice within ninety (90) days after receipt thereof or such longer period as may be reasonably necessary to correct the same. Also for the purposes of this Section 4(b), any successor, assignee, collateral assignee or Leasehold Mortgagee-in-possession may exercise the extension rights of this Section 4(b), provided that such entity (i) is not then in default under this Lease and (ii) is meeting the needs of the soccer community, as described in this Section 4(b).~~

**5. Rent.** Foundation covenants and agrees to pay to Commission Base Annual Rent in the amount of One Dollar (\$1.00) per year, payable in advance on the first day of each Lease

Year throughout the Lease Term, at Commission's notice address set forth in Section 1(a)(5) or at such other place as shall be designated in writing by Commission.

**6. Purpose of Lease and Use of SoccerPlex.**

(a) Purpose of Lease. The purpose of this Lease is to develop and maintain a premier facility primarily to meet the needs of the Montgomery County and the Maryland soccer communities by leveraging the assets of both the public and the private sectors, while preserving the interests of each; to provide quality fields that are accessible to the public at reasonable rates that ensures the financial viability of the facility. The Commission and the Foundation each acknowledge that the Foundation's contribution of private funding and management, together with the Commission's contribution of public land and infrastructure within the Park will enable the development of such a facility, the SoccerPlex, earlier than either could accomplish alone. For purposes of this Section 6(a), Foundation shall be deemed to be meeting the needs of the Montgomery County and the Maryland soccer communities if Foundation is operating the SoccerPlex in accordance with the Field Usage Allocation Guidelines established by the Foundation, and approved by the Montgomery County Planning Board, which approval shall not be unreasonably withheld, conditioned or delayed taking into account the time requirements for scheduling use of the Soccer Fields, and which shall, at a minimum, address the following criteria:

(1) Meet the purpose of the Lease as set forth in Section 6 herein, including to ensure the financial viability of the SoccerPlex.

(2) Use of the Soccer Fields and the Indoor Multi-Purpose Facility will be granted only to clubs and teams that pay Field-Use Fees, or have been awarded Foundation scholarships. The Field-Use Fee shall be based principally upon the cost of maintenance and operation of the Soccer Fields, the amortized cost of development of the Soccer Fields, capital improvements, capital and operational reserves, and debt reduction, with credit as appropriate for any funding received that is directed to reduce the Field-Use Fees, including grants and sponsorships.

(3) Other than Tournament play, the majority (at least fifty-one percent (51%)) of the combined use of the Indoor Multi-Purpose Facility and the Soccer Fields shall be for sports-related activities and shall be primarily for the use of Montgomery County and Maryland soccer communities, with preference to upcounty teams for Saturday play during Outdoor Soccer Seasons. Notwithstanding, this obligation shall not apply in the event sports-related users are not contracting for use of the Indoor Multi-Purpose Facility and the Soccer Fields.

(4) Use of the Soccer Fields shall take into consideration the ability of new, viable and active youth soccer clubs and teams from Montgomery County to gain access to the SoccerPlex.

(5) Foundation will work in partnership with the Commission and Montgomery County Department of Recreation ("MCRD") to identify youth



soccer teams from Montgomery County that are not able to make long-term commitments for use of the Soccer Fields with a goal of allocating five percent (5%) of the non-Tournament use of the Soccer Fields and the Indoor Multi-Purpose Facility; provided however, such Soccer Fields can be released for use by other users sixty (60) days prior to the time set aside for use if they are not scheduled for use in accordance with this provision.

(6) All users must agree to, and must participate in all components of, the Foundation's internal dispute resolution procedures between the user and the Foundation for issues related to use of the SoccerPlex before the user can seek redress with either the Commission or the Council.

Furthermore, the purpose of this Lease is to authorize Foundation to construct, manage and maintain both high quality outdoor Soccer Fields for the game of soccer and related uses, and to construct, manage and maintain an Indoor Multi-Purpose Facility for primarily for the games of soccer and indoor soccer, but also for i) such other sports-related uses including, but not limited to basketball, lacrosse, in-line hockey, volleyball, sports-related meetings, dinners and functions, and such other ii) non-sports and community activities as may be approved by the Director of Park and Planning. An ice rink or sheet of ice is specifically excluded as a permitted use-related community activities in order to raise funds to support the ongoing operations of the SoccerPlex. The Foundation's primary use of the Indoor Multi-Purpose Facility shall remain sports-oriented, measured by time scheduled with the majority (at least fifty-one percent (51%) of the use dedicated to sport-oriented uses.

(b) Permitted Use. Foundation shall have the right to use the Premises for the construction, maintenance and operation of the Soccer Fields, the Indoor Multi-Purpose Facility and all of the other SoccerPlex Improvements in accordance with the purposes, uses and terms of this Lease, and for no other purpose or use; provided however, all non-sports-related uses shall be subject to the approval of the Director of Parks, which approval shall not be unreasonably withheld, conditioned or delayed, given the nature of the request, the use requested and the financial impact to the Foundation that a delay might cause ("Use Request"). Such a Use Request shall be made in accordance with the provisions set forth in this Article 6. Upon such approval, the use, unless specifically conditioned otherwise, shall be deemed a Permitted Use. An ice rink or sheet of ice is specifically excluded as a Permitted Use. In addition, Foundation shall have the nonexclusive right to use all Park Infrastructure Improvements (such as water, sewer, electricity, gas and telephone) to facilitate its use of the Soccer Fields, the Indoor Multi-Purpose Facility and all of the other SoccerPlex Improvements; provided that Foundation's nonexclusive use of the Park Infrastructure Improvements shall be in accordance with the terms and conditions set forth in this Lease. This provision shall not be construed as providing Foundation with any rights to use of the parking lots inside and parking along the Loop Road (now named Central Park Circle) and parking along the Spine Road (now named Germantown Park Road) Drive north of Schaeffer Road, except as may be otherwise set forth in the Lease. The Foundation may seek a waiver of these use restrictions as provided in Section 13(b)(11).

(c) Any Use Request must meet the following conditions:

(1) The Foundation must submit each Use Request in writing to the Director of Parks, with a copy to the Park Police.

(2) The Director of Park's approval shall not be unreasonably withheld, conditioned or delayed, given the nature of the Use Request and the financial impact to the Foundation that a delay might cause. The Director of Parks has the reasonable discretion to grant or deny a Use Request, or to grant a Use Request with conditions, with the sole and subjective discretion to notify the public of any such request. The Director of Parks may provide notice, electronically or otherwise, of some or all Use Requests to the public or any community advisory group that the Director of Parks deems appropriate.

(3) Traffic capacity for an event for which a Use Request is sought will be presumed to be adequate if it is in accordance with the Traffic Standards and, upon its finalization, the Traffic and Parking Management Plan. The Foundation must submit with the Use Request its certification that the use for which the Use Request is being made is anticipated to meet the Traffic Standards and the Traffic and Parking Management Plan.

(d) ~~(e) Constraints.~~ Foundation shall comply with all of the provisions of the PDFs and of all required permits in its use of the Premises and its construction and operation of the SoccerPlex Improvements. Foundation agrees not to commit waste on the Premises and not to knowingly use the Premises for any unlawful purpose or in violation of any certificate of occupancy, nor suffer any dangerous article to be brought on the Premises unless safeguarded as required by law. Foundation agrees to comply reasonably, promptly, and effectively with all applicable Laws of all Governmental Authorities. Commission agrees to give notice promptly to Foundation of any notice from any Governmental Authorities, person, group or organization in respect of the Premises including, without limitation, any notice pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions, and other environmental matters, and any direction of any public agency that imposes any duty upon Commission or Foundation with respect to the use or occupancy of the Premises. Foundation may, in good faith, dispute the validity of any complaint or action taken pursuant to or under color of any of the foregoing, defend against the same, and in good faith, diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Foundation agrees that any such contest shall be prosecuted to a final conclusion with reasonable dispatch, and Foundation will hold Commission harmless with respect to any actions taken by any Governmental Authorities with respect thereto.

## **7. Construction of Improvements.**

~~The SoccerPlex Improvements and the Park Infrastructure Improvements shall be constructed in accordance with the Development and Construction Agreement to be subsequently entered into by the parties. Foundation shall not commence any construction of any kind or nature on the Premises until Foundation has provided Commission with evidence that sufficient funds are available and obligated for the payment of the cost of such construction, plus a contingency fund for cost overruns to be established on a contract-by-contract basis, to be mutually agreeable to the parties. If any Soccer Fields cannot be constructed on the Premises~~

during Phase I due to governmental restrictions, then (i) such Soccer Fields shall be constructed during Phase II, and (ii) during Phase I, Foundation shall be permitted to construct one or more Soccer Fields in the area of the Park which would otherwise be added to the Premises at the commencement of Phase II; provided, however, that in no event shall more than seventeen (17) Soccer Fields, plus the two (2) Community Soccer Fields, be constructed during Phase I, or more than three (3) Soccer Fields be constructed during Phase II.

(a) Phase I Construction. [Intentionally deleted.]

(b) Phase II Construction. All conditions precedent to the right of the Foundation to commence Phase II construction have been met, subject to appropriation of public funding by the Council. During Phase II construction, the Commission, at its sole cost and expense, shall relocate the Baseball Field C (as shown on Exhibit A), which was previously identified as a part of Phase III; provided however, the costs therefore shall be setoff against any public funding previously intended to be requested of the Council as part of the Phase III funding. In order for Commission and Foundation to coordinate their respective obligations with respect to the SoccerPlex Improvements and the Park Infrastructure Improvements to be constructed during Phase II (and during Phase III as set forth in Section 7(c)), the parties shall enter into a Development and Construction Agreement, which shall also take into consideration relocation of Baseball Field C, and which shall require that the Foundation provide Commission with evidence that the Foundation holds, or has contracted for, sufficient funds for the payment of the cost of such construction as such payments become due and owing.

(c) (a) Phase III Construction. The Foundation shall not commence any construction of any kind on Phase H until: (i) Foundation has provided Commission with evidence that the Foundation holds sufficient Funds for the payment of the cost of such construction, plus a contingency fund for cost overruns to be established on a contract-by-contract basis by mutual agreement of the Commission and Foundation; (ii) until: (1) Foundation obtains in advance of construction all funding for Phase H from a source of funding not currently committed to operating revenue (e.g., an independent grant or donation); and (iii) and has provided Commission with evidence that the Foundation holds, or has contracted for, sufficient funds for the payment of the cost of such construction, and; (2) Foundation has provided evidence that the Traffic Standards (i) have not been exceeded as a result of Phase II, and (ii) are not anticipated to be exceeded as a result of Phase III. (3) construction of the relocated Baseball Field C has been completed and the new field is ready for use, and (4) the County Council has approved an amendment to PDF No. 998712 (or a new PDF) allowing Phase H to proceed. III to proceed. The Commission and Foundation shall coordinate their respective obligations with respect to the SoccerPlex Improvements and the Park Infrastructure Improvements to be constructed during Phase III as part of the Development and Construction Agreement as set forth in Section 7(b).

## **8. Construction of Roads in and to Park. [Intentionally deleted.]**

(a) Required Road Construction before Opening of SoccerPlex. Notwithstanding anything to the contrary in this Lease, the SoccerPlex shall not be opened for business until the following road improvements are complete:

~~(1) — The two existing lanes of Schaeffer Road from Richter Farm Road to the Spine Road in the Park are widened; and~~

~~(2) — Richter Farm Road is completed between MD 118 and Schaeffer Road.~~

~~Commission agrees to acquire land along Schaeffer Road sufficient for the road widening described in subparagraph (1) above in time to allow sufficient time for completion of such road improvements by August 1, 2000. Commission further agrees to acquire land adjacent to MD 118 for construction of the Spine Road in time to allow sufficient time for completion of construction of the Spine Road by August 1, 2000. If Commission is unable to negotiate an acceptable transfer price for such land, that Commission, in its sole discretion, considers reasonable, in time to allow sufficient time for completion of such road improvements by August 1, 2000, then Commission and Foundation agree that they will jointly ask County to exercise its quick take condemnation procedures to acquire such land. If County exercises its quick take condemnation procedures to acquire such land, Commission shall not encumber funds appropriated by the Council for such acquisition for any other purpose. If Commission fails to acquire such land in time to allow sufficient time for completion of construction of such road improvements by August 1, 2000, Foundation may, in its sole discretion, terminate this Lease. Termination shall be Foundation's only remedy for a default by Commission under this Section 8(a).~~

~~(b) — Required Road Construction before Opening of Phase II Improvements. Notwithstanding anything to the contrary in this Lease, the SoccerPlex Improvements to be constructed during Phase II shall not be used until Schaeffer Road, from Richter Farm Road to the Spine Road in the Park, is converted to a four (4) lane divided road. Commission agrees to acquire land along Schaeffer Road sufficient for the road widening described in this paragraph in time to allow sufficient time for completion of such road improvements by August 1, 2002. If Commission is unable to negotiate an acceptable transfer price for such land, that Commission, in its sole discretion, considers reasonable, in time to allow sufficient time for completion of such road improvements by August 1, 2002, then Commission and Foundation agree that they will jointly ask County to exercise its quick take condemnation procedures to acquire such land. If County exercises its quick take condemnation procedures to acquire such land, Commission shall not encumber funds appropriated by the Council for such acquisition for any other purpose. If Commission fails to acquire such land in time to allow sufficient time for completion of construction of such road improvements by August 1, 2002, Foundation may, in its sole discretion, terminate this Lease. Termination shall be Foundation's only remedy for a default by Commission under this Section 8(b).~~

## **9. Maintenance and Repair.**

(a) Foundation's Maintenance Responsibilities. Throughout the Lease Term, Foundation shall, at Foundation's sole cost and expense, keep the following improvements in good order and condition, reasonable wear and tear and damage by Casualty excepted:

(1)    ~~(i)~~ Soccer Fields 1 through 22 (including turf and irrigation),

~~(2)~~ ~~(ii)~~—all Championship Field improvements (including seating, scoreboards, lights, miscellaneous related equipment and plaza areas),

~~(3)~~ ~~(iii)~~—the Indoor Multi-Purpose Facility, the plaza and the sidewalks adjacent thereto,

~~(4)~~ ~~(iv)~~—the field lights for any lighted Soccer Fields 9, 10, 12 and 13, except the Community Soccer Fields, if lighted,

~~(5)~~ ~~(v)~~—the Parking Areas serving Soccer Fields 1 through 22 and the Indoor Multi-Purpose Facility, and the lighting (if any) for all such Parking Areas, but not the entrance roads from the ~~Loop Road~~Central Park Circle to said Parking Areas or the lighting for such entrance roads,

~~(6)~~ ~~(vi)~~—the Comfort Stations on the Premises, provided that, to the extent used by the Commission, the Commission is responsible for all maintenance of the Comfort Stations pertaining to the Commission's use (and, accordingly, no rental charge shall be due and owing to the Foundation),

~~(7)~~ ~~(vii)~~—the recharge trenches on the Premises,

~~(8)~~ ~~(viii)~~—the ADA trails on the Premises,

~~(9)~~ ~~(ix)~~—the turf and non-turf landscaping throughout the Premises, except that which is the Commission's responsibility to maintain under Section 9(b),

~~(10)~~ ~~(x)~~—the portions of the water and sewer infrastructure outside of the ~~Loop Road and Spine Road~~Central Park Circle and Germantown Park Drive right-of-way shown to be ~~Foundations'~~Foundation's responsibility on the attached Exhibit E, and

~~(11)~~ ~~(xi)~~—the Foundation signage described in Section 10(c).

~~(xii)~~—~~Foundation shall pay rent for the Park Maintenance Facility, in accordance with Section 9(e).~~

Foundation's maintenance responsibilities shall include making or causing to be made all necessary repairs, alterations and/or replacements, interior, exterior, structural and nonstructural, to the aforesaid improvements. All such repairs, alterations and replacements shall be at least equal in quality to the original work. Foundation's maintenance responsibilities shall also include keeping the Premises free of trash and debris. Foundation shall place such trash and debris in trash cans and dumpsters provided by Foundation, and shall arrange for the regular removal of trash from such trash cans and dumpsters. Foundation shall also remove trash and debris from the entire area of the Park inside the ~~Loop Road~~Central Park Circle and empty all trash receptacles within such area within twenty-four (24) hours after the conclusion of all Tournaments. Foundation shall hold harmless and indemnify the Commission ~~harmless~~ with respect to any liability in respect of maintenance or repair required under this Section 9(a).

Foundation shall have the right to lock the Comfort Stations at all such times as the Comfort Stations are not being used for SoccerPlex events; provided, however, that Foundation shall leave the Comfort Stations opened at other times requested by Commission. ~~Foundation and Commission shall agree upon a rental charge to be paid by Commission for such use of the Comfort Stations.~~

(b) Commission's Maintenance Responsibilities. Commission shall, at Commission's sole cost and expense, throughout the Lease Term, keep the following improvements in good order and condition and shall make or cause to be made all necessary repairs, alterations and/or replacements thereto, interior, exterior, structural and nonstructural, reasonable wear and tear and damage by Casualty excepted:

(1) ~~(i) the Loop Road~~ Central Park Circle and the non-grass landscaping and lighting on the perimeter of the ~~Loop Road~~ Central Park Circle,

(2) ~~(ii) the non-grass landscaping along Schaeffer Road on the perimeter of the Premises,~~

(3) ~~(iii) the Spine Road~~ Germantown Park Drive, the lighting on the perimeter of the ~~Spine Road~~ Germantown Park Drive, and the non-grass landscaping along and within the median strip of the ~~Spine Road~~ Germantown Park Drive,

(4) ~~(iv) the portions of the water and sewer infrastructure outside of the Loop Road and Spine Road~~ Central Park Circle and Germantown Park Drive right-of-way shown to be Commission's responsibility on the attached Exhibit E,

(5) ~~(v) the entrance roads from the Loop Road~~ Central Park Circle to the Parking Areas and the lighting for such entrance roads,

(6) ~~(vi) stormwater management facilities, sand filters and outfalls, but only upon the first to occur of the following three events: (A) Foundation's delivery to Commission of written notification of Foundation's substantial completion of Phase III; (B) Foundation's delivery to Commission of written notification of Foundation's decision not to proceed with the construction of Phase II; or (C) Foundation's delivery to Commission of written notification of Foundation's decision not to proceed with the construction of Phase III.~~ At whatever time Foundation transfers maintenance of the stormwater management facilities, sand filters and outfalls, these items must be completely constructed, including any and all punch list items related thereto, and, further must be fully operational, clean and in good working order. Upon Foundation's delivery of the notification set forth in (B) or (C) above, Foundation's interest in, and right to, any and all leasehold interest in all remaining unbuilt Phase(s) (if any) shall terminate. At such time, the Commission shall have full authority to enter and use any property to which Foundation relinquished its leasehold interest under this Section as if never subject to this Lease,

(7) ~~(vii)~~ all of the non-ADA trails within the Premises (including soft trails, hiker/biker trails, trails connecting hiker/biker trails with off-site trails, and trails adjacent to the ~~Loop Road~~Central Park Circle),

(8) ~~(viii)~~ the Commission signage described in Section 10(b) and the way-finding signage described in Section 10(d); provided however that such way-finding signage installed within the Park shall be maintained and repaired by Commission on a shared cost basis as described in Section 10(d), and

(9) ~~(ix)~~ all portions of the Park except the Premises (including all improvements thereon), including, without limitation, maintaining, repairing and making necessary alterations and replacements to:

(i) ~~(A)~~ roads and parking lots outside the Premises (including keeping such roads and parking lots free of snow and ice),

(ii) ~~(B)~~ the area south of the ~~Loop Road~~Central Park Circle, east of the hiker/biker trail adjacent to Soccer Field 22, north of Schaeffer Road and west of and including the ~~Spine Road~~Germantown Park Drive, including landscaping, parking lots, parking lot lights and the Community Soccer Fields (including turf and irrigation),

(iii) ~~(C)~~ the four (4) Baseball/Softball Fields,

(iv) ~~(D)~~ the Park Maintenance Facility and the driveway and parking lot for the Park Maintenance Facility,

(v) ~~(E)~~ the Pumping Station in the Central Park,

(vi) ~~(F)~~ the BMX Track driveway and parking lot, and

(vii) ~~(G)~~ all trails outside the Premises, including those in the Central Park.

All such repairs, alterations and replacements shall be at least equal in quality to the original work. Commission's maintenance responsibilities shall also include keeping all areas of the Park except the Premises free of trash and debris, and remove snow and ice from any Parking Areas used for non-SoccerPlex events during the winter months. Commission shall hold harmless and indemnify the Foundation harmless with respect to any liability in respect of maintenance or repair required under this Section 9(b).

(c) Park Maintenance Facility. Throughout the Initial Term, Foundation shall have the right to use space in Commission will ensure that the Maintenance Facility can continually, during the Lease Term, accommodate both the Commission's and Foundation's use (without the obligation to expand such accommodation beyond the Foundation's workspace and use as of the Effective Date), which shall be without charge to the Foundation; provided however, Foundation shall reimburse Commission for (1) Foundation's Proportionate Share of the electricity supplied to the Park Maintenance Facility for Foundation's maintenance activities

~~pursuant to Section 9(a), provided that Foundation pays Commission rent for such space as follows: Foundation shall pay to Commission \$32,500 per year, payable in monthly installments of \$2,708.33, as rent for the use of the Maintenance Facility. The Maintenance Facility will be designed to accommodate both the Commission and Foundation's use and be mutually agreeable to both parties. The rent will be escalated at an annual rate of 5% throughout the Initial Term. Before the effective date of any Extension Term, the parties shall mutually agree on the rental amount for the Maintenance Yard during the upcoming Extension Term deemed to be 20% of the total. (2) fuel actually taken from the Commission owned tanks that is used by the Foundation, and (3) any additional, actual labor costs (excluding benefits) for services provided to the Foundation by employees and/or contractors of the Commission. Foundation's payment of any such labor costs shall not be deemed to have created an employer/employee relationship with any such employees or contractors of the Commission. Foundation shall keep the Park Maintenance Facility free of trash and debris as a result of its use thereof.~~

## 10. Signage

(a) Park Signage Guidelines. ~~All signage installed in the Park by Foundation and/or Commission shall develop mutually agreeable conform to the guidelines established by the Foundation and Commission for the size, shape, color and lettering style of all signage in the Park (the "Park Signage Guidelines"). All signage installed in the Park by Foundation or Commission shall conform to the Park Signage Guidelines, unless otherwise mutually agreed by the parties.~~

(b) Commission Signage. Except as set forth in Section 10(d), all signage installed by Commission on the Premises or other areas of the Park solely for Commission use shall be installed at Commission's expense and shall be maintained in good condition and repair by Commission, at its expense.

(c) Foundation Signage. All signage installed by Foundation on the Premises or other areas of the Park solely for Foundation use shall be installed at Foundation's expense and shall be maintained in good condition and repair by Foundation, at its expense. Foundation's signage on the Premises may include signs identifying donors to and sponsors of the SoccerPlex. Foundation shall have the right to install and utilize event boards, so long as such event boards conform to the Park Signage Guidelines.

(d) Way-finding Signage within Park. Commission and Foundation shall install within the Park way-finding signs to the Soccer Fields, the Community Soccer Fields and the Indoor Multi-Purpose Facility, in accordance with the Park Signage Guidelines. Foundation and Commission ~~and any other tenants named on such signage shall share equally proportionately~~ the cost of design, fabrication and installation of such way-finding signage. All such way-finding signage installed within the Park shall be maintained in good condition and repair by Commission on a shared cost basis.

(e) Off-Park Signage. ~~Commission and Foundation shall work together with the County and the Federal and Maryland State governments, toward the self after the initial installation of the~~ directional signage to the Park and the SoccerPlex in locations outside of the



Park. If after the initial installation, any such signage is changed due to a change in the name of the SoccerPlex or any portion thereof, then Foundation shall pay for the cost of such change.

**11. Sponsorships and Naming Opportunities.**

**11. Sponsorships and Naming Opportunities.** Foundation shall have the right ~~(a) to name (i, subject to approval by Commission, which approval shall be in the sole and absolute discretion of the Commission, to name (a) the Championship Field, (ii) the other Soccer Fields, (iii) the Indoor Multi-Purpose Facility, (iv) (which is currently known as the Discovery Sports Center), (d) the entire SoccerPlex, and (v) (subject to guidelines approved by Commission) other SoccerPlex Improvements or elements thereof-after,~~ Foundation shall have the right, without the necessity of approval by Commission, to offer event, activity and program sponsorship opportunities to organizations, companies or individuals which, as an inducement to contribute funds to the Foundation for the construction and operation of the SoccerPlex ("Sponsors") or other parties, and (b) to offer other rights, including signage (subject to guidelines approved by Commission) as an inducement to potential Sponsors. All naming pursuant to this Section 11 shall be subject to approval by Commission, which approval shall not be unreasonably withheld, including for specific events and Tournaments ("Sponsors"); provided, however, the Foundation covenants that it will not, without Commission approval, permit certain Commission specified categories of sponsorships (e.g., gun, tobacco or alcohol manufacturers). In conjunction with such naming and/or sponsorship opportunities, Foundation may give Sponsors or other parties signage (subject to the Park Signage Guidelines) in the SoccerPlex, exclusive rights to sell their products at the SoccerPlex and such other rights as Foundation shall deem reasonable.

**12. Right to Enter.**

(a) By Commission. Any member, employee or agent of Commission may, at all reasonable hours, enter onto the Premises or any Improvements on the Premises.

(b) By WSSC. Foundation shall grant any member, employee or agent of Washington Suburban Sanitary Commission (WSSC) access, at all reasonable hours, to the Premises and any Improvements to the Premises.

**13. Operation and Management of Soccer Facilities.**

(a) Scheduling of Park Events. ~~In order to ensure traffic generation rates are not exceeded, and that there is adequate parking within the Park, the following shall apply: The parties agree that activities within and throughout the Park must not exceed Traffic Standards and can be accommodated by the available parking spaces in the Park, and therefore, the following shall apply;~~

(1) The Commission acknowledges that all tenants and facilities in the Park managed and/or maintained by the Parks Department will be subject to the Traffic and Parking Management Plan and that it will require all tenants or other primary users, including the Foundation and the Commission, to enter into a Traffic and Parking Management Plan for the coordination of events and activities in the Park so that such uses, including during construction of the improvements

for any such use, are coordinated to stay within the Traffic Standards and can be accommodated by the available parking spaces in the Park. The Commission acknowledges that it will require this provision for a Traffic and Parking Management Plan to be included in all of its Leases, Operating Agreements, other contracts and/or other arrangements for use of the Park with all tenants and other primary users in the Park, including the Swim Center, the Tennis Center, and the Golf Driving Range.

(2) (1)-Commission shall obtain Foundation's written permission prior to scheduling on Tournament days any event in the Park, which (A) is likely to generate traffic in the park in excess of the Traffic Generation Rates attached hereto as Exhibit H-2, or (B) Standards, or (ii) is likely to generate parking in the Parking Areas in excess of available parking spaces, until the Traffic and Parking Management Plan is completed.

(3) (2)-Commission shall coordinate with the Foundation all other events during Outdoor Soccer Seasons on non-Tournament days, which (A) are likely to generate traffic in the Park in excess of Traffic Generation Rates attached hereto as Exhibit H-2, or (B) Standards, or (ii) are likely to generate parking in the Parking Areas in excess of available parking spaces, until the Traffic and Parking Management Plan is completed.

(4) Nothing in this Lease shall permit the Foundation to require closure of the Park or to require the interruption of routine activities in the Park.

(b) SoccerPlex Usage and Scheduling and Field Resting. Foundation shall apply activate and maintain the Advisory Committee as defined in Section 2(b) herein. The Foundation shall consider the following guidelines in scheduling the use of the SoccerPlex:

(1) Permittees All prospective users of the Soccer Fields and the Indoor Multi-Purpose Facility will be required to obtain a permit from the Foundation for any use of the Soccer Fields and the Indoor Multi-Purpose Facility, including practice, pickup games and informal, unscheduled team play, in accordance with Section 6(a)(2), unless such user has obtained a scholarship from the Foundation.

(2) — Permits for use of the Soccer Fields will be granted only to clubs and teams which pay either Affiliated Organization Assessments or Field Use Fees, or have been awarded Foundation scholarships.

(2) (3)-Foundation's maintenance and resting schedule for the Soccer Fields shall dictate the availability of the Soccer Fields for use by Permittees.

(3) (4)-The scheduling of the use of the Soccer Fields shall include the tournament schedules of Affiliated Organizations must not exceed Traffic Standards, and once developed and agreed to, shall be in conformance with the Traffic and Parking Management Plan.

~~(5) Foundation shall give preference to upcounty teams when scheduling Saturday play during Outdoor Soccer Seasons.~~

(4) When allocating and scheduling the use of the Soccer Fields, Foundation shall comply with its Field Usage Allocation Guidelines.

~~(5)~~ (6) Foundation shall provide scholarships for payment of Field-Use Fees for the Soccer Fields to individuals and groups unable to afford to pay such fees, in such amounts as Foundation may deem reasonable.

~~(7) Until the earlier to occur of the completion of the Phase I construction or September 1, 2002, no more than six (6) Tournaments shall be scheduled for any calendar year. Thereafter, Foundation shall obtain Commission's prior written approval of any Tournaments in excess of six (6) per calendar year. Before taking any action on a request for such approval from Foundation, Commission shall provide at least twenty (20) days notice of such request to a list of the homeowner associations and civic associations that have requested notice of such requests.~~

~~(8) On weekend days (except during Tournaments), Foundation shall not permit Soccer Fields to be used in excess of seventy-five percent (75%) of their total playing capacity, thereby resting the Soccer Fields for at least twenty-five percent (25%) of their total playing capacity. Accordingly, (i) during Phase I, no more than sixty-five (65) games shall be scheduled, (ii) during Phase II, no more than seventy-five (75) games shall be scheduled, and (iii) during Phase III, no more than eighty-five (85) games shall be scheduled. Games which are rained out or must be rescheduled due to maintenance requirements may be rescheduled for weekdays.~~

~~(9) During Tournaments, (i) during Phase I, no more than one hundred fourteen (114) games per day shall be scheduled, (ii) during Phase II, no more than one hundred thirty-two (132) games per day shall be scheduled, and (iii) during Phase III, no more than one hundred forty-four (144) games per day shall be scheduled, in each case, on the Soccer Fields and the Community Soccer Fields.~~

(6) Foundation shall be responsible for scheduling Tournaments at the SoccerPlex; provided however, Tournaments shall only be scheduled for a period of no more than three (3) days, unless a fourth (4<sup>th</sup>) day does not interfere with regularly scheduled play.

(7) (10) More than two (2) teams may be permitted to play on the same Soccer Field at the same time, so long as the traffic generation rates, over all, on a per Soccer Field basis, do not exceed the Traffic Generation Rates shown on the attached Exhibit H-1, from such usage is anticipated to be in conformance with the Traffic Standards, and once developed and agreed to, the Traffic and Parking Management Plan.

~~(8) (11) The soccer fields in the Indoor Multi-Purpose Facility may be used throughout the year for indoor soccer, basketball, lacrosse, in-line hockey, volleyball, sports-related meetings, dinners and functions and such other sports and community activities as may be approved by the Director of Park and Planning. The soccer fields in the Indoor Multi-Purpose Facility may be used throughout the year in accordance with the Purpose and Permitted Uses as set forth in Article 6 herein.~~

~~The Director of Park and Planning, or the Director's designee, may waive the use restrictions in Sections 6(a) and this Section to allow business-related activities on the Premises, such as meetings, dinners, functions, and exhibitions. The Foundation's primary use of the Indoor Multi-Purpose Facility, measured by time allocated, must remain sports-oriented. Any waiver of the use restrictions must meet the following conditions:~~

~~The Foundation must submit each waiver request in writing to the Director of Park and Planning, with a copy to Park Police. Before submitting any waiver request, this Foundation must consult the Conference and Visitors Bureau (CVB) regarding whether the event can be accommodated by any CVB member and must obtain the CVB's comments on the Foundation's request for a waiver.~~

~~The Director has sole and subjective discretion to grant or deny a waiver request, or to grant a request with conditions, and sole and subjective discretion to notify the public of any waiver request. The Director may provide notice, electronically or otherwise, of some or all waiver requests to the public or any community advisory group that the Director establishes.~~

~~Traffic capacity for an event for which a waiver is sought must be presumed to be adequate if:~~

- ~~(i) no soccer tournament or swim meet is scheduled for the same day, and the proposed event will not be attended by more than 1,000 people; or~~
- ~~(ii) a soccer tournament or swim meet is scheduled for the same day, and the proposed event will not be attended by more than 250 people.~~

~~If traffic capacity is not presumed to be adequate under the preceding paragraph, then the Foundation must submit with the waiver request a traffic statement that specifies the maximum number of attendees and the means by which they are expected to arrive at the facility (e.g., car, bus, vanpool) so the Commission's transportation staff may assess the traffic impact of the proposed event. The Director may deny a waiver request if the Director finds that traffic will be excessive. If a proposed event would generate excessive traffic, the Director may approve a waiver request if the Foundation and the entity holding the event commit to implement mitigation measures, such as carpooling or use of~~

~~vans or buses, or adjusting the time of the event, approved by the Director.~~

~~If no traffic statement is required, the Director must respond to each waiver request within 10 calendar days. If a traffic statement is required, the Director must respond to each waiver request, within 10 business days.~~

~~This waiver authority expires on December 31, 2007. The Foundation may seek from the Planning Board a two-year extension of the waiver authority. The Foundation must submit a written extension request at least six months before the waiver authority expires. The Board has sole and subjective discretion to grant or deny a request for an extension of the waiver authority.~~

~~If a waiver request is approved during the waiver authority period, including any extension, the Foundation may host an approved event that takes place after the waiver authority expires, but not later than one year after the authority expires.~~

~~For the duration of the waiver authority, the Commission's Secretary-Treasurer or her designee may quarterly review the Foundation's cash flow financial statements. This information must be treated as confidential commercial information, and the Commission must not retain any copies of any financial statement reviewed under this paragraph.~~

~~(12) The Advisory Committee shall recommend to Foundation and Commission (i) what percentage, if any, of the non-Tournament use of the Soccer Fields shall be allocated to youth soccer teams and leagues which are not Affiliated Organizations, (ii) the amount of the Field Use Fee charged to such teams and leagues for use of the Soccer Fields, which Field Use Fee shall be based upon the cost of maintenance and operation of the Soccer Fields and the amortized cost of development of the Soccer Fields, (iii) the process of Soccer Field usage allocation, and (iv) other issues that may be identified by Foundation or Commission. Commission and Foundation shall mutually agree to the fee amounts and level of Soccer Field usage in clauses (i), (ii) and (iii) above, and when applicable, any issue addressed pursuant to clause (iv) above. Commission and Foundation shall mutually agree to any subsequent modifications to agreements made pursuant to this provision.~~

~~(9)~~ (13) The Hours of Operation of the SoccerPlex shall be as follows:

(i) For the Indoor Multi-Purpose Facility, 7:00 a.m. to 12:00 midnight; provided, however, the Director of Parks may waive the hours of operation on a case-by-case basis for any Permitted Use that takes place in the Indoor Multi-Purpose Facility.

(ii) For the Championship Field, all games and events shall ~~commence at or after 8:00 a.m. on Tournament days, and at or after 9:00 a.m. on non-Tournament days, and shall end by 11:00 p.m. However,~~ including operational support and warm-up activity for games and events

~~may activities shall~~ commence at or after 7:00 a.m., and shall end no later than ~~by~~ 12:00 midnight.

(iii) For all other lighted Soccer Fields ~~(whether lighted or non-lighted)~~, all games and events, including operational support and warm-up activities shall commence at or after 8:00 a.m. on Tournament days, and at or after 9:00 a.m. on non-Tournament days, and shall end by 11:00 p.m. ~~The lights around such Soccer Fields shall be controlled by timers which will turn such lights off at 11:00 p.m., and will provide warning of the same by dimming such lights for a reasonable period before 11:00 p.m. However, operational support and warm-up activity for games and events may commence at or after 7:00 a.m. and shall end no later than 11:00 p.m.~~ All users shall be warned in advance of such closing.

(iv) ~~For all non-lighted Soccer Fields, all games and events shall commence at or after 8:00 a.m. on Tournament days, and at or after 9:00 a.m. on non-Tournament days, and shall end no later than 9:30 p.m. However, operational support and warm-up activity for games and events may commence at or after 7:00 a.m. and shall end no later than 9:30 p.m.~~

(v) ~~The Director of Park and Planning may waive the hours of operation on a case by case basis for any use permitted under this Section that takes place in the Indoor Multi-Purpose Facility.~~

When scheduling the times that a Soccer Field is to be used, due consideration shall be given by the Foundation to the location of the Field and impact to the surrounding community.

(c) Community Soccer Fields. Commission shall make the Community Soccer Fields (shown as fields A and B on the attached Exhibit A) available to Foundation for use during Tournaments. Commission shall use reasonable efforts to keep the Community Soccer Fields in Tournament-quality condition. The Community Soccer Fields shall be rested periodically to recover from potential overuse or weather-related damage.

~~(d) Security and Traffic Control.~~

(d) ~~(1) Security and Traffic Control.~~ Throughout the Lease Term, Commission's police department ~~(the "Park Police")~~ shall provide routine security patrols of the SoccerPlex, at no cost, as well as of the rest of the Park. Foundation shall provide supplemental security and signage (e.g., no parking on the grass) for Tournaments and other events at the SoccerPlex, if appropriate. Foundation shall consult with the Division Chief of ~~Commission's~~ Park Police to determine the level of police services needed for Tournaments and other events. If Foundation elects to hire police force representatives to provide additional security, the ~~Commission's~~ Park Police shall have a right of first refusal to provide such security, at the rate then in effect under the Commission's contract with the Fraternal Order of Police. Foundation may elect to hire private security companies to provide additional security. Commission shall be responsible for providing security services and directing traffic for Commission-sponsored

events held in areas of the Park other than the SoccerPlex, and shall use reasonable efforts to direct traffic for such events in such a manner as to not materially interfere with the operation of the SoccerPlex.

~~(2) — The parties, for planning purposes, have assumed that Tournament and non-Tournament games played at the Soccer Fields and use of the Indoor Multi-Purpose Facility will not generate traffic in the Park in amounts in excess of the Traffic Generation Rates on the attached Exhibit H-1.~~

~~Until the commencement of Phase III, a consultant, compensated by Foundation and mutually agreed upon by Foundation and Commission, shall conduct counts of cars entering and leaving the SoccerPlex, in accordance with the Traffic Counting Procedures attached hereto as Exhibit H-3. Any Council approvals, based on traffic generation, which are necessary for the commencement of Phase II or Phase III, shall be based upon the standards set forth in the Traffic Generation Rates attached hereto as Exhibit H-1.~~

~~(3) — If Tournament and non-Tournament games played at the Soccer Fields and use of the Indoor Multi-Purpose Facility generates traffic in the Park in excess of the Traffic Generation Rates on the attached Exhibit H-1, then Foundation and Commission shall mutually develop, and Foundation shall implement, traffic mitigation measures.~~

(e) Commission's Obligations Regarding Trails. Commission shall have the right to construct hiker/biker trails, asphalt trails and soft-surface trails in the SoccerPlex, some of which may have connections to neighborhoods adjacent to the Park. If Foundation reports vandalism to the SoccerPlex Improvements by persons entering the SoccerPlex from an adjacent neighborhood using such a trail, then Commission shall use reasonable efforts to prevent such vandalism.

(f) Commission's Obligation's Regarding Roads and Park Construction. Commission shall use reasonable efforts to ensure that traffic in the Park for events scheduled in areas of the Park other than the SoccerPlex does not unreasonably interfere with SoccerPlex activities or the traffic for such activities. Commission shall also use reasonable efforts to ensure that construction in areas of the Park other than the SoccerPlex does not unreasonably interfere with SoccerPlex activities or the traffic for such activities. All such traffic regulation shall be performed in compliance with the Traffic Generation Rates attached hereto as Exhibits H-1 and H-2. Standards, and upon its completion, in conformance with the Traffic and Parking Management Plan.

(g) Compliance with Park Regulations. Foundation and Commission shall comply, and require their respective agents, employees, contractors, subtenants, concessionaires, licensees and invitees to comply, with the Maryland-National Capital Park and Planning Commission Regulations Governing Use of Commission Park and Recreation Facilities in Prince George's and Montgomery Counties (the "Park Regulations"), as the same may be amended by Commission from time to time, in their use and occupancy of the Park (including the SoccerPlex). In the event of any conflict between the Park Regulations and the provisions of this Lease, the Park Regulations shall govern, except as provided in the following sentence.

Notwithstanding anything to the contrary in the Park Regulations, Commission shall not close the SoccerPlex or the Park Infrastructure Improvements serving the SoccerPlex during the Hours of Operation or any other time Foundation is entitled to the use thereof in accordance with the terms of this Lease, except under emergency circumstances. The Commission's obligation to the Foundation under this Section does not limit the Commission's authority to close the Park to the public, which authority it may exercise in accordance with the Commission's normal operational procedures.

(h) Park Advisory Board. At such time as the Commission establishes an advisory board to advise the Commission on use of the Park, matters of interest to the Commission that impact the continued successful operations of the Park, including coordination among the tenants and other primary users in the Park and its impact on neighboring communities, the Foundation shall have representation on and participate in the meetings of such advisory board.

#### **14. Use of Proceeds from Operation of SoccerPlex.**

(a) Priority of Use. Foundation shall apply the proceeds it receives from the operation of the SoccerPlex and the contributions received for the SoccerPlex as follows:

~~(1) First, to the expenses of operating the SoccerPlex and performing its maintenance responsibilities under this Lease, as and when such expenses become due and payable.~~

~~(1) (2) Second, to the expenses of constructing the SoccerPlex (excluding those items described in Section 14(a)(4) below), and First, to the payment of the principal of, interest on and all other fees and charges to be paid in connection with any and all Leasehold Mortgage-Secured Debt, as and when the same become due and payable; provided, however, that notwithstanding anything contained in this Lease to the contrary, any pledge paid to Foundation (whether before, on or after the date such pledge is scheduled to be paid to Foundation) may be used by Foundation to pay Leasehold Mortgage-Secured Debt, without regard to whether any such payment constitutes a prepayment of Leasehold Mortgage-Secured Debt;~~

(2) Second, to the expenses of operating the SoccerPlex and performing its maintenance responsibilities under this Lease, as and when such expenses become due and payable, and to the expenses of improvements and upgrades to the SoccerPlex, including the Capital Improvements as set forth in Section 2(h) and as approved in accordance with Section 14(c);

(3) Third, to the establishment and replenishment of the following reserve funds in such order as deemed prudent by the Foundation:

~~(3) Third, to the establishment of a(i) Capital Reserve Fund.~~  
A reserve fund for improvements, replacements and contingencies shall be maintained during the Lease Term in the amount of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) (the "Reserve Fund"), in accordance with the Payment Schedule attached hereto as Exhibit J, which



Reserve Fund shall be held in a separate federally-insured bank account and shall not be commingled with Foundation's operating funds; and

~~(4) — Fourth, towards Soccer Field upgrades which may include:~~

~~(i) — installation of lighting for the Soccer Fields designated as Soccer Fields 9, 10, 12 and 13 on Exhibit A, if and when built;~~

~~(ii) — installation of additional bleacher seats around the Championship Field to bring the total number of bleacher seats around the Championship Field to 3,200; and~~

~~(iii) — construction of one additional soccer field in the Indoor Multi-Purpose Facility; provided, however, that Foundation shall not construct such additional soccer field until the Council has approved the same through an amendment to the PDF;~~

(ii) Turf Replacement Reserve Fund. Upon the construction of any Soccer Fields with synthetic turf, a reserve fund shall be maintained during the Lease Term, in amounts and at times deemed sufficient by the Foundation to replace the turf on such field(s) (whether replaced with synthetic or natural turf, which shall be at the discretion of the Foundation), which Reserve Fund shall be held in a separate federally-insured bank account and shall not be commingled with Foundation's operating funds; and

(iii) Operating Reserve Fund. A reserve fund shall be maintained during the Lease Term, in amounts and at times deemed sufficient by the Foundation to cushion against unanticipated revenue shortfalls or expenses, which Reserve Fund shall be held in a separate federally-insured bank account and shall not be commingled with Foundation's operating funds.

~~(4) (5) FifthFourth,~~ to the extent funds are available, on an annual basis (and not on a retroactive basis)

(i) (A) fifty percent (50%) to reimburse the Commission annually for all direct maintenance costs incurred by the Commission for maintenance of (iA) the entrance roads from the Loop RoadCentral Park Circle to the Parking Areas, (iiB) stormwater management ponds and sand filters, exclusive of the Central Park pond, and (iiiC) fifty percent (50%) of the cost of public water for irrigation of the Soccer Fields (provided, however, that Foundation may, at its option, assume the responsibility for maintenance of the items described in clauses (iA) and (iiB) above, rather than reimbursing Commission for its costs of maintaining those items), and

(ii) ~~(B)~~ fifty percent (50%) to prepay the Leasehold Mortgage-Secured Debt, with the exception of refinancings for the purpose of funding Capital Improvements and Repairs, to the extent any such prepayment is permitted without premium or penalty.

(b) Irrigation Water. At the commencement of the eleventh Lease Year, Foundation shall assume payments to WSSC for one hundred percent (100%) of the cost of water used thereafter for irrigation of the Soccer Fields, pursuant to Section 16(b).

(c) Construction of Additional Improvements and Facilities. Except for the improvements described in Sections 14(a)(2) and (4) Capital Improvements which are hereby permitted, any material improvements constructed by Foundation in or on the SoccerPlex shall require the prior written approval of Commission. Foundation shall not renovate or construct any soccer facilities elsewhere, with proceeds from the operation of the SoccerPlex, without the prior written consent of Commission.

(d) Use of Revenues off the Premises. Foundation shall not use funds raised by Foundation before completion of the Phase I construction of the SoccerPlex for any purpose other than construction, operation and maintenance of the SoccerPlex, and payment of Leasehold Mortgage Secured Debt, in the priorities set forth in Section 14(a) of this Lease, without the express written consent of Commission. [Intentionally deleted.]

(e) Expenses of SoccerPlex. For the purposes of Section 14(a), the "expenses of constructing the SoccerPlex" shall be deemed to include, but not be limited to, all payments of principal, interest and other amounts required to be paid during the construction of the SoccerPlex with respect to Foundation's Line of Credit with Bank of America, N.A. in the amount of \$8 million, which indebtedness is expected to be refinanced with Leasehold Mortgage Secured Debt, and with respect to any Leasehold Mortgage Secured Debt. [Intentionally deleted.]

#### 15. Foundation Reporting to Commission.

(a) On or before March 31 of each calendar year, Foundation shall provide to Commission, for review and comment, audited financial statements, including a calculation of the amount, if any, due to the Commission in accordance with Section 14(a)(4) (prepared by a certified public accountant in accordance with generally accepted accounting principles) with respect to Foundation's operation of the SoccerPlex during the preceding fiscal year of the Foundation.

(b) On or before December 120 of each calendar year, Foundation shall provide to Commission, for review and comment, (i) operating projections for the forthcoming calendar year, (ii) proposed Soccer Field usage allocation guidelines, proposed Affiliated Organization Assessments and standards, and proposed fees for use of (2) its Field Usage Allocation Guidelines, and Field-Use Fees for use of the Soccer Fields and for the Indoor Multi-Purpose Facility for the forthcoming calendar year, and actual usage, assessments and fees for the previous year, (iii) a comparison of the past year's projections and year-to-date actual figures, (iv) results of traffic and water monitoring for the previous year, (v) all waivers

~~requested under Sections 13(b)(11) and 13(b)(13)(v) Section 6(c), indicating all waiver requests that were both granted and denied; a description of each event held pursuant to a waiver, including the number of attendees, revenue generated, and additional expenses incurred; projected waiver requests for the upcoming year; a list of all sport-related requests for use of the Premises that were not scheduled because of conflicting events scheduled pursuant to a waiver; a calendar showing all uses scheduled at the SoccerPlex for the upcoming year, and (5) a calendar showing the actual uses of the SoccerPlex the previous year; and (vi) all uses scheduled at the SoccerPlex for the upcoming year, and (6) any other information reasonably requested by Commission. Foundation agrees to set fees and raise revenues that will meet or exceed its expenses for construction, operation and maintenance of the SoccerPlex, as provided in this Lease. Foundation further agrees to permit additional soccer organizations to become Affiliated Organizations if such soccer organizations (A) agree to pay Foundation the then current Affiliated Organization Assessments, and (B) meet such other standards as may be established, and modified from time to time, by Foundation.~~

(c) Upon completion, but in no event later than 45 days after each quarter of each calendar year, Foundation shall provide to Commission, for review and comment, quarterly income statements with updated year-end projections, which income statements shall be treated as confidential commercial information, and the Commission must not share such information or disclose such information outside of the Commission without the express written consent of the Foundation.

(d) Each of the reports required under this Section 15(a), (b) and (c) shall be provided by the Foundation to the Commission's Secretary-Treasurer. Additionally, Foundation shall provide Commission with copies of any amendments executed in connection with any Leasehold Mortgage, certified by the Foundation to be a true and correct copy of such instrument.

(e) No less than once each calendar year, Foundation shall appear before the Commission and make a presentation of the Foundation's operation of the SoccerPlex during the preceding calendar year, including, (1) significant activities conducted by the Foundation in support of its purpose under this Lease, including how the Foundation is complying with the purposes of this Lease, (2) a summary and representation of its compliance with the terms of this Lease, (3) actual and anticipated game allocations, and (4) any other information reasonably requested by Commission.

(f) Audit and Inspection. In the event of receipt of a written affidavit alleging fraud, which allegation is determined by the Commission in its reasonable judgment to be credible and in good faith, the Commission shall have the right, but not the obligation, to access, at all reasonable times, all the Foundation's personnel, books, records, correspondence, instructions, plans, drawings, receipts, vouchers, financial accounts, data stored in computer files or microfiche, and memoranda of every description pertaining to any of the matters related to the fraud alleged ("Services"). Commission shall have the right to reproduce any of these documents. Foundation shall include the necessary provisions in its contracts to cause its contractors and vendors to preserve all such documents for a period of three (3) years after completion of its services under the relevant contract. Commission shall not be liable for costs resulting from an audit hereunder. No inspection or approval will relieve Foundation of any and

obligations hereunder or its contractors of any warranties granted. This Article survives termination or expiration of this Lease.

16. Utilities.

(a) Electricity. Foundation shall pay the utility company for the electricity supplied to the Indoor Multi-Purpose Facility, the Parking Areas, the Comfort Stations on the Premises, the Championship Field lights, any other Soccer Field lights and the irrigation system on the Premises. Commission shall pay the utility company for all other electricity supplied to the Park. (In accordance with Section 9(c), Foundation shall reimburse Commission for Foundation's ~~Proportionate Share~~ proportionate share of the electricity supplied to the Park Maintenance Facility.)

(b) Water and Sewer.

(1) ~~(i)~~ Water During Construction. All water used during construction on the Premises during each Phase shall be paid for by Foundation. For purposes of this paragraph, construction of a Soccer Field shall be presumed to be completed upon the first mowing of grass thereon.

(2) ~~(ii)~~ Indoor Multi-Purpose Facility and Comfort Station Water and Sewer. Throughout the Lease Term, Foundation shall pay the Washington Suburban Sanitary Commission ("WSSC") for all water and sewer service supplied to the Indoor Multi-Purpose Facility and the restroom fixtures within the Comfort Stations on the Premises.

(3) ~~(iii)~~ Irrigation Water. Except as provided in Section 14 and this Section 16, Commission shall pay WSSC for all water used to irrigate the Premises (including the Championship Field and the other Soccer Fields). At the time set forth in Section 14(a)(54), Foundation shall reimburse Commission for up to fifty percent (50%) of the cost of such irrigation water; provided, however, that Commission shall not pay more than Five Thousand Six Hundred Twenty-five Dollars (\$5,625.00) per Soccer Field per year for irrigation water, which amount shall, in the event of a WSSC rate increase above Four and 06/100 Dollars (\$4.06) per one thousand (1,000) gallons, be increased proportionately with such rate increase. Said reimbursement shall be made within thirty (30) days after Commission's submission to Foundation of an invoice for such cost. Commencing at the beginning of the eleventh (11th) Lease Year, and thereafter throughout the remaining Lease Term, Foundation shall pay WSSC for all water used to irrigate the Premises.

(4) ~~(iv)~~ Other Park Water and Sewer. Except as set forth in subparagraphs (i1), (ii2) and (iii3) of this Section 16(b), Commission shall be responsible for the cost of all water and sewer service supplied to the Park, including the cost of all water used to irrigate the Community Soccer Fields.

(5) ~~(v)~~ Foundation shall not use groundwater for any purpose in the construction or operation of the SoccerPlex, except as may be necessary solely for

water monitoring purposes pursuant to Section 17. However, Commission intends to pursue a water appropriation permit from the appropriate State agency for use of groundwater as part of the development of Central Park, which is not part of the SoccerPlex or the Premises.

~~17. Stream and Ground Water Monitoring.~~

**17. Stream and Ground Water Monitoring.** Foundation and Commission agree to implement the Water Monitoring Program attached hereto as Exhibit K. Any Council approvals, based on water quality, which are necessary for the commencement of Phase II or Phase III, shall be based on the standards set forth in the Water Monitoring Program attached hereto as Exhibit K.

**18. Hazardous Materials.**

(a) Commission's Responsibilities.

(1) Throughout the Lease Term, during any period when Park Infrastructure Improvements or SoccerPlex Improvements are being constructed in the Park, Commission, at its expense, shall retain an environmental engineering consulting firm to advise Commission on how to deal with any Hazardous Materials found at the Park. If any Hazardous Materials are discovered in the Park during construction of the Park Infrastructure Improvements or the SoccerPlex Improvements, Commission, at its expense, shall promptly remove such Hazardous Materials from the Park and restore the Park to its condition prior to the introduction of such Hazardous Materials to the Park. Commission shall coordinate such remediation work with the Contractors performing the construction of the Park Infrastructure Improvements and the SoccerPlex Improvements, so as not to interfere with or delay such construction. If any such remediation work does interfere with or delay such construction, Commission shall work diligently with Foundation to find means of eliminating such interference or delay.

(2) During the Lease Term, Commission shall use, store, manage and dispose of Hazardous Materials in the Park in accordance with all applicable Laws. If Commission breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material in the Park caused or permitted by Commission results in contamination of the Park or of properties located in the proximity of the Park, then without any waiver of the Commission's immunities under state law Commission shall indemnify, defend and hold Foundation harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term as a result of such contamination. This indemnification of Foundation by Commission includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of

Hazardous Material present in the soil or ground water on or under the Park or the adjacent properties. Without limiting the foregoing, if the presence of any Hazardous Material in the Park and/or the adjacent properties caused or permitted by Commission results in any contamination of the Park and/or the adjacent properties, Commission, at Commission's expense, shall promptly take all actions as are necessary to return the Park and/or the adjacent properties to the condition existing prior to the introduction of any such Hazardous Material to the Park and/or the adjacent properties.

(3) Throughout the Lease Term, Commission shall promptly notify Foundation of any Hazardous Materials discovered in the area of the Park inside the ~~Loop Road~~Central Park Circle, and shall provide Foundation with copies of any environmental studies performed on the area of the Park inside the ~~Loop Road~~Central Park Circle.

(b) Foundation's Responsibilities. Foundation shall use, store, manage and dispose of all Hazardous Materials on the Premises in accordance with all applicable Laws. If Foundation breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused or permitted by Foundation results in contamination of the Premises or of properties located in the proximity of the Premises, then Foundation shall indemnify, defend and hold Commission harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term as a result of such contamination. This indemnification of Commission by Foundation includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or the adjacent properties. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises and/or the adjacent properties caused or permitted by Foundation results in any contamination of the Premises and/or the adjacent properties, Foundation, at Foundation's expense, shall promptly take all actions as are necessary to return the Premises and/or the adjacent properties to the condition existing prior to the introduction of any such Hazardous Material to the Premises and/or the adjacent properties.

#### 19. Foundation's Insurance.

(a) Required Insurance. Foundation shall, at its own cost and expense, carry (or cause to be carried by concessionaires and licensees) with companies reasonably acceptable to Commission the following insurance in respect of the SoccerPlex and the SoccerPlex Improvements:

(1) Commercial general liability insurance written on an occurrence basis with respect to the SoccerPlex and the business operated by Foundation and any subtenants, concessionaires, or licensees of Foundation in the SoccerPlex with minimum combined single limits of Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate. Such liability insurance shall, in addition, extend, through contractual liability insurance, to any liability of Foundation

arising out of the indemnities provided in this Lease. Such liability insurance shall also include broad form endorsement coverage, including personal injury/advertising injury coverage. From time to time, but no more frequently than once every five (5) years, the minimum amount of liability insurance required hereunder may be increased to such amounts as are commonly insured for in the case of premises similarly situated.

(2) Automobile liability coverage for all claims of bodily injury and/or property damage arising out of the use of any owned, non-owned or hired vehicles by Foundation in the Park, with a minimum combined single limit of Two Million Dollars (\$2,000,000.00).

(3) With respect to the SoccerPlex Improvements, insurance against loss or damage by fire and other risks covered by all-risk ("special" form) extended coverage casualty and property damage insurance (including demolition coverage) in an amount not less than one hundred percent (100%) of the full insurable replacement value of such SoccerPlex Improvements (exclusive of cost of excavation, foundation, and footings below the ground floor), without reduction for depreciation, and in amounts sufficient to prevent Foundation from becoming a co-insurer under such policies of insurance.

(4) With respect to the Foundation's personal property located within the Park Maintenance Facility, insurance against loss or damage by fire and other risks covered by all-risk ("special" form) extended coverage casualty and property damage insurance in an amount not less than one hundred percent (100%) of the full insurable replacement value of such personal property, without reduction for depreciation, and in amounts sufficient to prevent Foundation from becoming a co-insurer under such policies of insurance.

(5) (During any period in which substantial construction activities are being performed in connection with the SoccerPlex Improvements, builder's all-risk insurance for the protection and benefit of Commission and Foundation in an amount equal to the full replacement cost of the SoccerPlex Improvements.

(6) To the extent required by law, Workers' Compensation or similar insurance affording statutory coverage and containing statutory limits.

(7) Such other insurance against other insurable hazards as are from time to time commonly insured against in the case of premises similarly situated.

(b) Policy Requirements. With respect to all insurance required to be maintained hereunder by Foundation:

(1) Each such policy shall be from an insurance company licensed to do business in the state where the SoccerPlex is located and which has a rating of A or better from Best Company or BBB from Standard and ~~Peer~~Poors;

(2) Each liability policy (except any Worker's Compensation policy) shall include Commission as an additional insured, and shall be endorsed to state that such policy is to be considered as primary coverage for the additional insured and not be contributing with or in excess of any other similar coverage available to such additional insured;

(3) Each policy shall contain only reasonable deductible amounts;

(4) A certificate of each liability insurance policy and evidence of each property insurance policy, together with evidence of payment of premiums, shall be deposited with Commission at the commencement of the Lease Term, and renewal certificates or evidence of renewal policies shall be delivered to Commission at least thirty (30) days prior to the expiration date of any policy.

(5) Foundation shall, at Foundation's sole cost and expense, observe and comply with all policies of insurance in force with respect to the SoccerPlex;

(6) Each insurance policy shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be materially changed, amended, canceled for any cause or not renewed without at least thirty (30) days' prior written notice from the insurer to Commission; and

(7) Each insurance policy shall, to the extent obtainable, contain provisions that no act or negligence of Foundation or any concessionaire, licensee or occupant of the SoccerPlex, or its or their contractors or subcontractors or their agents or employees, which might otherwise result in a forfeiture of such insurance or any part thereof, shall in any way affect the validity or enforceability of such insurance insofar as Commission is concerned.

(8) Foundation shall not, without Commission's prior written consent, which consent may be granted or withheld in Commission's sole discretion, self-insure any of the coverages required under this Section 19.

(c) Commission's Right to Procure. If Foundation shall fail to maintain any such insurance required hereunder, or if Foundation shall fail to deliver a renewal certificate or copy of a renewal policy to Commission by the fifteenth (15th) day prior to the expiration date of any policy, Commission may, at Commission's election, after five (5) days' written notice to Foundation, procure the same, and the premium cost shall be Additional Rent, immediately due and payable, it being hereby expressly covenanted and agreed that payment by Commission of any such premium shall not be deemed to waive or release the obligation of Foundation to make payment thereof or any of Commission's other rights hereunder.

## **20. Commission's Insurance.**

(a) Property Insurance. Commission shall, at its own cost and expense, carry the following insurance against loss or damage by fire and other risks covered by all-risk ("special" form) extended coverage casualty and property damage insurance (including demolition coverage) in an amount not less than one hundred percent (100%) of the full



insurable replacement value of the Park Maintenance Facility (exclusive of cost of excavation, foundation, and footings below the ground floor), without reduction for depreciation, and in amounts sufficient to prevent Commission from becoming a co-insurer under such policy of insurance.

(b) Self Insurance. Except as provided in Section 20(a), Commission may provide self-insurance for its obligations under this Lease, provided that Commission provides Foundation with a copy of Commission's self insurance agreement. Such self insurance agreement shall be attached hereto as Exhibit M.

## **21. Indemnity.**

(a) By Foundation. Except when caused by the negligence, willful misconduct or other wrongful conduct of Commission, its agents, employees or contractors, and to the extent of insurance available to Foundation, Foundation shall indemnify and save Commission harmless against and from, and shall reimburse Commission for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses, including but not limited to reasonable attorneys' fees, which may be imposed upon or incurred or paid by or asserted against Commission or Commission's fee interest in the SoccerPlex by reason of or in connection with any of the following:

(1) any occurrence on any part of the SoccerPlex, except (i) the trails thereon, and (ii) when opened for use by the general public at Commission's request, the Parking Areas and Comfort Stations thereon;

(2) any breach or default in the performance of any of Foundation's obligations under this Lease;

(3) any other acts or omissions of Foundation, its agents or employees;  
or

(4) any claim by a concessionaire, licensee, invitee, member, ~~Affiliated Organization (or member or invitee of an Affiliated Organization)~~ of Foundation for any occurrence on any part of the SoccerPlex.

In case any action or proceeding is brought against Commission by reason of any claims described in this Section 21(a), Foundation, if Commission gives Foundation reasonable notice thereof, shall, at Foundation's expense, defend such action or proceeding. Foundation's obligations under this Section 21(a) shall survive the expiration or termination of the Lease Term.

(b) By Commission. Except when caused by the negligence, willful misconduct or other wrongful conduct of Foundation, its agents, employees or contractors, and to the extent of its statutory liability, Commission shall indemnify and save Foundation harmless against and from, and shall reimburse Foundation for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses, including but not limited to reasonable attorneys' fees, which may be imposed upon or incurred or paid by or asserted against Foundation by reason of or in connection with any of the following:

(1) any occurrence on the trails in the SoccerPlex, on the roads in the Park, or on any other non-SoccerPlex area of the Park, or the Parking Areas or Comfort Stations in the SoccerPlex when such Parking Areas or Comfort Stations are opened for use by the general public at Commission's request;

(2) any breach or default in the performance of any of Commission's obligations under this Lease; or

(3) any other acts or omissions of Commission, its agents or employees.

In case any action or proceeding is brought against Foundation by reason of any claims described in this Section 21(b), Commission, if Foundation gives Commission reasonable notice thereof, shall, at Commission's expense, defend such action or proceeding. Commission's obligations under this Section 21(b) shall survive the expiration or termination of the Lease Term.

## **22. Condemnation/Casualty.**

### **(a) Condemnation.**

(1) In the event of a Minor Taking, this Lease shall terminate as to that portion of the Premises taken as of the date when title vests in the condemning authority. Commission shall be obligated to diligently commence and expeditiously pursue restoration of the Park Infrastructure Improvements in the remaining portion of the Premises, and Foundation shall be obligated to diligently commence and expeditiously pursue restoration of the SoccerPlex Improvements in the remaining portion of the Premises. Subject to Section 24(a)(2), Foundation shall be entitled to claim, prove and receive a portion of the condemnation award for the SoccerPlex equal to the replacement value of the SoccerPlex Improvements taken plus the remaining value of the Foundation's leasehold interest in the Soccer Fields taken. Subject to Section 24(a)(2), the remaining condemnation award for the value of the SoccerPlex shall be paid to Commission. The parties shall request that the condemning authority specify what portion of the condemnation award is for the SoccerPlex Improvements and what portion is for the Foundation's leasehold interest in the Soccer Fields.

(2) In the event of a Temporary Taking, this Lease shall remain in full force and effect for the duration of such temporary taking. There shall be no adjustment to the Base Annual Rent. Subject to Section 24(a)(2), the full amount of the condemnation award for the Temporary Taking shall belong to Foundation.

(3) In the event of a "Major Taking," Foundation, by written notice to Commission, may terminate this Lease on the date when title vests in such condemning authority, in which event the Base Annual Rent shall be prorated between Commission and Foundation as of such termination date. Subject to Section 24(a)(2), Foundation shall be entitled to claim, prove and receive a portion of the condemnation award for the SoccerPlex equal to the remaining value of all of the SoccerPlex Improvements plus the replacement value of Foundation's

leasehold interest in the Soccer Fields (whether or not taken or condemned in such Major Taking), and the remaining condemnation award for the value of the SoccerPlex shall be paid to Commission. The parties shall request that the condemning authority specify what portion of the condemnation award is for the SoccerPlex Improvements and what portion is for the Foundation's leasehold interest in the Soccer Fields.

(b) Casualty.

(1) In the event that the Improvements, or any portion thereof, are damaged or destroyed by fire or other casualty (a-"Casualty"), Foundation shall be obligated to restore the SoccerPlex Improvements, and Commission shall be obligated to restore the Park Infrastructure Improvements, to substantially the same condition as existed prior to such damage or destruction; provided that if the Casualty occurs with fewer than five (5) Lease Years remaining in the Lease Term, and causes damage to the SoccerPlex Improvements that would cost more than seventy-five percent of the original cost of construction to repair, Foundation shall have the right to terminate this Lease by giving Commission written notice within thirty (30) days of the Casualty, in which event the provisions of Sections 22(b)(3) and 22(b)(4) shall govern.

(2) If Foundation is obligated to restore the SoccerPlex Improvements, Foundation shall continue to pay Rent during such period and shall be obligated, at its sole cost and expense, to diligently commence and expeditiously pursue the repair of such damage so as to restore the SoccerPlex Improvements to substantially the same condition as existed prior to such damage or destruction. In such event, Commission, at its sole cost and expense, shall diligently commence and expeditiously pursue the repair of the damage to the Park Infrastructure Improvements so as to restore the Park Infrastructure Improvements to substantially the same condition as existed prior to such damage or destruction.

(3) If Foundation elects to terminate this Lease, in accordance with Section 22(b)(1), and if Commission so requests, Foundation shall demolish and remove the SoccerPlex Improvements from the Premises, and place the Premises from which such SoccerPlex Improvements were removed in a safe and sanitary condition, within one hundred twenty (120) days after the effective termination date; provided, however, that Foundation shall not be required to expend for such demolition, removal and restoration any amount in excess of any proceeds of casualty and builder's risk insurance policies received by Foundation with respect to the Casualty. Upon completion of such removal, or if removal is not required, Commission shall be entitled to all of the proceeds of any casualty and builder's risk insurance policies which have not been applied by Foundation to the cost of any such required demolition, removal and restoration. Foundation's obligations under this Section 22(b)(3) shall survive termination of this Lease.

(4) If Foundation terminates this Lease under Section 22(b)(1), Foundation's obligation to pay Base Annual Rent due hereunder shall cease as of the date of such damage or destruction.

(c) The provisions of this Section 22 regarding the application of any condemnation awards or insurance proceeds payable to Foundation are subject to the provisions of Section 24(a)(2).

**23. Assignment, Subletting and Change of Corporate Structure.**

(a) Assignment by Commission. With the exception of an assignment to the United States, the State of Maryland or Montgomery County, Maryland, Commission shall not assign this Lease or Commission's reversion hereunder, without the prior written consent of Foundation, which consent shall not be unreasonably withheld. In the event of the transfer and assignment by Commission of its interest in this Lease, Commission shall be released from any responsibility for obligations hereunder accruing after the date of the assignment, and Foundation agrees to look solely to such successor in interest of the Commission for performance of such obligations. The term "Commission" as used in this Lease shall mean the owner of the Premises at the time in question. In the event of a transfer (whether voluntary or involuntary) by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Lease thereafter accruing, but such covenants and obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership.

(b) Assignment by Foundation. Except as permitted by Section 24, Foundation shall have no right to transfer or assign this Lease, in whole or in part, or sublet all or any part of the Premises, by operation of law or otherwise, without the prior written consent of Commission, which consent may be withheld in the sole and absolute subjective discretion of Commission. Any transfer, assignment or subletting consented to by Commission shall be at all times subject to this Lease and the prior right, title, and interest of Commission in and to the Premises. In the event of an assignment of this Lease by Foundation, Foundation shall be released from any responsibility for obligations hereunder accruing after the date of the assignment, and Commission agrees to look solely to such successor in interest of the Foundation for performance of such obligations. Upon any assignment or transfer of Foundation's interests under this Lease pursuant to realization by a Leasehold Mortgagee on any Leasehold Mortgage (whether by foreclosure or deed-in-lieu thereof), the Commission shall, upon request by the assignee or transferee, execute a new lease, effective as of the date of termination, with such assignee or transferee ("New Lease") for the remainder of the then effective term of this Lease, at the Rent and Additional Rent, and upon the same terms, covenants and conditions set forth in this Lease and applicable to the remainder of the then effective term of this Lease, and otherwise in accordance with Exhibit O to this (including all options to renew but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

(1) Such Leasehold Mortgagee shall make written request upon Commission for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Commission's notice of termination of this Lease.

(2) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Commission, at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which Commission shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Commission from Foundation or other party in interest under Foundation.

(3) Such Leasehold Mortgagee or its designee shall agree to remedy any of Foundation's defaults of which said Leasehold Mortgagee was notified by Commission's notice of termination and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.

(4) The tenant under any such New Lease shall be liable to perform the obligations imposed on the tenant by such New Lease only during the period such person has ownership of such leasehold estate.

(5) The New Lease is otherwise acceptable to Commission, it being understood and agreed that Commission shall not have the right to seek or include in such New Lease any term, condition or qualification which is inconsistent with any of the foregoing provisions of this Section.

(6) If more than one Leasehold Mortgagee shall request a New Lease pursuant to this Lease, Commission shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Commission, without liability to Foundation or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued, without expense to Commission, by a responsible title insurance company doing business within the state in which the Premises is located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

(c) Licenses or Concessions. Foundation shall have the right to grant licenses and concessions for retail, food and beverage and ~~sport-related uses~~ other Permitted Uses allowed under this Lease within the Premises. ~~Licenses~~ Such licenses or concessions for retail, food and beverage and ~~sport-related uses~~ may be granted for the ~~Indoor Multi-Purpose Facility~~ Premises, without the necessity of obtaining the consent or permission of Commission, subject to permitting as may be required by any Laws. Such licensees or concessionaires may distribute their products anywhere within the Premises. ~~Commission permits shall be required for other licenses or concessions for retail, food and beverage and sport-related uses on the Premises.~~ ~~Commission's prior written consent shall be required in the event Foundation contracts for use of all or any part of the Premises for any other uses.~~ Any license or concession shall be at all times subject to this Lease and to the prior right, title, and interest of Commission in and to the Premises. Licenses and concessions entered into by Foundation shall provide that the licensee or concessionaire agrees to recognize Commission as the landlord of the Premises. Foundation hereby assigns to Commission the fees or any other amounts due from any licensee or

concessionaire and hereby authorizes each licensee and concessionaire to pay said fees and other amounts directly to Commission, at Commission's option, in the case of an Event of Default by Foundation under the terms of this Lease; provided, however, that Commission's right to receive such fees and other amounts shall be subject to the rights of any Leasehold Mortgagee to receive the same. Nothing contained in this Lease or any license, concession or other agreement shall require or obligate Commission to cure any abrogation of any obligation of Foundation under any license or concession. If this Lease is terminated, for any reason, prior to the expiration of the Lease Term, Landlord shall permit all licensees and concessionaires to remain on the Premises for the remaining terms of their respective license or concession agreements, and such agreements shall become direct agreements between Commission and such licensees and concessionaires.

(d) Foundation 501(c)(3) Status. Foundation agrees to maintain its Section 501(c)(3) status throughout the Lease Term; provided, however, that the foregoing requirement shall not apply to any Leasehold Mortgagee (or any entity owned or controlled by any Leasehold Mortgagee) that succeeds to the interest of Foundation under this Lease (whether by foreclosure or deed-in-lieu thereof).

(e) Foundation Board. During the Lease Term, Foundation agrees to confer membership on its governing board by providing one voting seat to a member, which member will be nominated by the Montgomery County Planning Board and reasonably approved by the Foundation. Such board member shall be subject to the rules, responsibilities and obligations of the governing board and the Foundation.

(f) (e)-Dissolution of Foundation. If Foundation is dissolved, any funds and assets then in Foundation's possession after payment of all debts and satisfaction of all obligations due and payable with respect to Foundation's obligations as, and in the order set forth, in Section 14 of this Lease shall be distributed to the Montgomery County Parks Foundation, Inc. (provided that it has Section 501(c)(3) status), with the stipulation that such funds and assets be used to promote and facilitate soccer. If the Montgomery County Parks Foundation, Inc. does not have Section 501(c)(3) status, then such funds and assets shall be distributed to an organization, designated by Commission, with Section 501(c)(3) status, which promotes soccer, or if no such organization can be found, then to an organization with Section 501(c)(3) status, which promotes recreational sports.

#### **24. Mortgage of Foundation's Interest in Indoor Multi-Purpose Facility.**

(a) Foundation's Right to Mortgage. Foundation shall have the right at any time and from time to time to assign, mortgage, pledge and otherwise encumber Foundation's interest in the Premises (which shall include, without limitation, the right to receive, any and all pledges, fees, revenue, income, rents and other proceeds related thereto) to an Institutional Lender as security for a loan in connection with the Premises or to refinance such a loan, provided that any such Leasehold Mortgage complies with the requirements of Section 23(b) and this Section 24. Any Leasehold Mortgage shall include a provision to the effect that an Event of Default under this Lease shall constitute grounds for an Event of Default under the Leasehold Mortgage. Any Leasehold Mortgage shall affect and encumber only the right, title and interest of Foundation in and to the leasehold estate under this Lease (which shall include, without

limitation, the right to receive any and all pledges, fees, revenues, income, rents and other proceeds related thereto). No Leasehold Mortgage or any extension, modification or amendment thereof made by Foundation shall be a lien or encumbrance upon the estate or interest of Commission in the Premises or any part thereof. Any Leasehold Mortgage shall contain and/or otherwise be subject to the following provisions:

(1) That the Leasehold Mortgage is executed upon the condition that no purchaser at any foreclosure sale (or purchaser by deed-in-lieu of foreclosure) or purchaser from such purchaser shall acquire any right, title or interest in or to the Lease, unless the purchaser, or the person or entity to whom or to which such purchaser's right has been assigned, (i) has been approved by Commission, provided, however, that Commission's approval shall not be required in the event that the purchaser at any foreclosure sale (or purchaser by deed-in-lieu of foreclosure), or purchaser from such purchaser, or the person or entity to whom or to which such purchaser's right has been assigned is the Leasehold Mortgagee or an entity owned or controlled by the Leasehold Mortgagee, and (ii) in the instrument transferring to such purchaser or to such assignee the interest of Foundation under this Lease, shall unconditionally assume and agree to perform all of the terms, covenants and conditions of this Lease to be observed or performed on the part of the Tenant with respect to the Premises, that no further or additional mortgage or assignment of the leasehold interest in the Premises shall be made except in accordance with the provisions contained in this Lease, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, is delivered to Commission under this Lease immediately after the consummation of such sale, or, in any event, prior to taking possession of the Premises.

(2) The proceeds of any insurance policy required to be maintained by Foundation pursuant to this Lease and the proceeds of any condemnation award granted to Foundation at any time, except with respect to a casualty or taking which occurs within the final two (2) years of the Lease Term, shall be applied, at the option of Commission, to the Leasehold Mortgage-Secured Debt or to the restoration of the SoccerPlex Improvements. The proceeds of any insurance policy and the proceeds of any condemnation award granted to Foundation with respect to a casualty or taking which occurs within the final two (2) years of the Lease Term shall be applied first to the Leasehold Mortgage-Secured Debt, and the remainder, if any, to the restoration of the SoccerPlex Improvements. The application of any insurance proceeds or condemnation award to the Leasehold Mortgage -Secured Debt shall not relieve Foundation of any obligation it may have under this Lease with respect to the restoration of the SoccerPlex Improvements. In furtherance of the foregoing obligation to restore, Foundation shall employ its best efforts to obtain replacement financing in the event net available insurance proceeds or condemnation awards are insufficient for any reason to repair or rebuild; subject, however, to the provisions of Section 22(b)(1).

(3) That the Leasehold Mortgage and all rights of the Leasehold Mortgagee thereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of Commission under this Lease, as this Lease may have been previously modified, amended or renewed, or may thereafter be modified, amended or renewed with the consent of the Leasehold Mortgagee.

Clauses shall be added to any and all insurance policies required to be carried hereunder by Foundation or any successor-in-interest to Commission, which clauses shall provide that the Leasehold Mortgagee will be named as an additional insured with respect to liability insurance and as a mortgagee with respect to property, builder's risk and similar insurance provided that the insurance proceeds are to be applied in the manner specified in this Lease.

(b) Second Mortgage. Notwithstanding anything to the contrary herein, Foundation shall not grant a second priority Leasehold Mortgage, unless (i) such second priority Leasehold Mortgage secures a loan to finance the cost of construction of Capital Improvements or performance of Capital Repairs, (ii) such second priority Leasehold Mortgage is granted to the holder of the first priority Leasehold Mortgage, and (iii) the Executive Director of the Commission consents to such second priority Leasehold Mortgage, which consent may be granted or withheld in her sole discretion. Promptly after granting any Leasehold Mortgage, Foundation shall provide Commission with an original of each instrument (including such core instruments as loan documents, financing statements and amendments thereto, but excluding documents such as correspondence) creating, effecting and/or executed in connection with such Leasehold Mortgage, certified by the Leasehold Mortgagee to be a true and correct copy of such instrument, and a notice containing the name and address of the Leasehold Mortgagee.

(c) Leasehold Mortgagee Right to Notice and Cure. Any Leasehold Mortgagee with respect to which Commission has received a written notice specifying the name and address of such Leasehold Mortgagee, shall be given (by personal delivery or by certified mail, return receipt requested) by Commission a copy of each notice of default by Foundation or other notice or demand to or upon Foundation, at the same time as and whenever such notice of default or other notice or demand shall thereafter be given by Commission to Foundation, addressed to such Leasehold Mortgagee at the address last furnished to Commission. No notice of a default by Foundation or demand upon Foundation shall be deemed to have been given by Commission to Foundation unless and until a copy thereof shall have been given to each Leasehold Mortgagee with respect to which Commission has been notified. Commission will accept within the periods of time set forth in Section 25(c), performance by any such Leasehold Mortgagee of any covenant, condition or agreement on Foundation's part to be performed hereunder with the same force and effect as though performed by Foundation, and any Leasehold Mortgagee which performs any covenant, condition or agreement shall be subrogated to any and all rights of Foundation with respect thereto. Nothing contained in this Lease shall obligate any Leasehold Mortgagee to cure any default of Foundation under this Lease or constitute an assumption by any Leasehold Mortgagee of the obligations of Foundation under this Lease. Notwithstanding anything contained in this Lease to the contrary, in the case of any Event of Default described in Section 25 that cannot reasonably be cured by the Leasehold Mortgagee without first obtaining possession and control of the Premises, then the applicable cure period set forth in Section 25(b) shall be extended by such amount of time as is reasonable to permit the



Leasehold Mortgagee to obtain possession and control of the Premises and thereafter cure such Event of Default so long as the Leasehold Mortgagee commences efforts to obtain possession and control of the Premises within such applicable cure period and thereafter diligently pursues such efforts to completion and, after obtaining such possession and control, cures the applicable Event of Default within forty-five (45) days.

(d) Commission Right to Notice and Cure of Leasehold Mortgage Default.

Any Leasehold Mortgage shall require that Commission be given (by personal delivery or by certified mail, return receipt requested, addressed to Commission at the address set forth herein or to such other address as may have been furnished by Commission to such Leasehold Mortgagee) by the Leasehold Mortgagee a copy of each notice of default by Foundation under the Leasehold Mortgage, at the same time as and whenever such notice of default be given by the Leasehold Mortgagee to Foundation. If a notice of default by Foundation is not provided by a Leasehold Mortgagee to Commission as provided above, such Leasehold Mortgagee shall be prohibited from foreclosing upon or otherwise exercising its rights and remedies against the Premises until such notice of default is provided by such Leasehold Mortgagee to Commission as provided above. Each Leasehold Mortgage shall require the Leasehold Mortgagee to accept within the time periods set forth in the Leasehold Mortgage for the benefit of Foundation performance by Commission of any covenant, condition or agreement on Foundation's part to be performed under the Leasehold Mortgage with the same force and effect as though performed by Foundation, and if Commission performs any such covenant, condition or agreement, it shall be subrogated to any and all rights of Foundation with respect thereto; provided, however, that no such subrogation shall result in a merger of the respective estates of Foundation and Commission unless the Leasehold Mortgage - Secured Debt has been paid in full and the Leasehold Mortgage has been released of record. Nothing contained in this Lease shall obligate Commission to cure any default of Foundation under any Leasehold Mortgage, or constitute an assumption by Commission of the obligations of Foundation under any Leasehold Mortgage.

(e) Commission Right to Cure After Second Notice. Any Leasehold Mortgage shall require that if Foundation fails to cure any default under such Leasehold Mortgage within the time limits set forth therein, the Leasehold Mortgagee shall give written notice of such failure (an "Uncured Default Notice") to Commission (by personal delivery or by certified mail, return receipt requested, addressed to Commission at the address set forth herein or to such other address as may have been furnished by Commission to such Leasehold Mortgagee). If Commission receives an Uncured Default Notice, Commission shall have the right to cure any default described in that notice, by doing the following:

(1) In the case of a monetary default,

(i) within thirty (30) days after receipt of such Uncured Default Notice, giving written notice to the Leasehold Mortgagee and Foundation of Commission's intent to cure such default (an "Intent to Cure Notice"), and

(ii) as soon as reasonably practicable, and in all events within sixty (60) days after delivering the Intent to Cure Notice, paying all amounts past-due under such Leasehold Mortgage, including penalties, it

being agreed that Commission shall diligently pursue funding to pay such amounts commencing promptly after it delivers the Intent to Cure Notice.

(2) In the case of a nonmonetary default,

(i) within thirty (30) days after receipt of such Uncured Default Notice, giving an Intent to Cure Notice to the Leasehold Mortgagee and Foundation, and

(ii) if the default is capable of being cured without possession of the Premises, curing such default within thirty (30) days after delivering the Intent to Cure Notice, or

(3) ~~(iii)~~ if the default is not capable of being cured without possession of the Premises, curing such default within one hundred twenty (120) days after delivering the Intent to Cure Notice; provided, however, that if Commission, by due diligence, cannot recover possession of the Premises and cure such default within such one hundred twenty (120) day period, then such one hundred twenty (120) days period shall be extended for such amount of time as is reasonably required for Commission to recover possession of the Premises and process such cure to completion; provided that (A) Commission shall commence proceedings to recover possession of the Premises promptly after delivery of the Intent to Cure Notice and continuously process the same to completion, and upon recovering possession of the Premises, shall diligently commence the curing of such default and continuously process the same to completion, (B) Commission shall cause all monetary defaults to be cured pursuant to Section 24(e)(1) and thereafter continue to cause payments to be made with respect to the Leasehold Mortgage - Secured Debt such that no additional monetary defaults shall occur during the cure period provided in this Section 24(e)(2)(iii), and (C) in any event, Commission shall cause the default to be cured within 180 days after delivering the Intent to Cure Notice.

Any Leasehold Mortgage shall provide that if Commission cures all defaults described in an Uncured Default Notice, the Leasehold Mortgagee shall be obligated to permit Commission to assume the obligations of Foundation under such Leasehold Mortgage. Commission agrees to execute any documents reasonably requested by any Leasehold Mortgagee to confirm Commission's rights and/or obligations under this Section 24(e).

(f) Leasehold Mortgagee as Holder of Foundation's Interest. If, after Commission elects to cure any default by Foundation, as and when provided above, Commission fails to cure such a default, or if the cure periods set forth in the Lease expire without cure by either Foundation or Commission, the Leasehold Mortgagee (or any entity owned and/or controlled by the Leasehold Mortgagee) shall, in addition to all other rights and remedies afforded to the Leasehold Mortgagee pursuant to the Leasehold Mortgage or otherwise, have the right to become the legal owner and holder of Foundation's leasehold interest in the Premises upon foreclosure of its Mortgage, or as a result an assignment in lieu of foreclosure, whereupon (but in no event before becoming such legal owner or holder) such Leasehold

Mortgagee (or any entity owned and/or controlled by the Leasehold Mortgagee) shall immediately become and remain liable for Foundation's obligations with respect to the Premises under this Lease, so long as (but no longer than) such Leasehold Mortgagee (or any entity owned and/or controlled by the Leasehold Mortgagee) remains the legal owner or holder of Foundation's leasehold interest in the Premises.

(g) Certain Restrictions During Leasehold Mortgage. So long as any Leasehold Mortgage is in existence, and no default exists hereunder which has not been cured (by Foundation or any Leasehold Mortgagee) within the period of time provided herein, Commission shall not accept a surrender of the all or any portion of the Premises or a termination or modification of this Lease, prior to the expiration of this Lease, without the prior written consent of all Leasehold Mortgagees (of whom Commission has received prior written notice). Any right or remedy which permits Foundation to terminate this Lease shall be conditioned on the written consent to such termination by all Leasehold Mortgagees.

(h) Lease Modifications for Financing. In the event any Leasehold Mortgagee requires, as a condition of providing financing, that modifications to this Lease be obtained, and provided that such modifications do not, in Commission's sole judgment, unreasonably increase Commission's obligations or reduce Commission's rights under this Lease, then Foundation shall submit to Commission a written request for amendment to this Lease stating such required modifications, and Commission may execute such amendment and deliver the same to Foundation.

(i) Notice of Mortgages. Foundation shall give Commission notice of any recorded mortgages or liens upon Foundation's leasehold interest in the Premises in connection with the financing of the SoccerPlex.

(j) Refinancing. Any refinancing loan secured by a Leasehold Mortgage in the Premises, which loan will increase the principal amount of the Leasehold Mortgage - Secured Debt by more than the amount of reasonable transaction costs incurred in connection with such a refinancing, shall require the prior written consent of Commission, which consent may be withheld in the sole and absolute subjective discretion of Commission. Any refinancing loan secured by a Leasehold Mortgage in the Premises which will not increase the principal amount of the Leasehold Mortgage - Secured Debt by more than the amount of reasonable transactions costs incurred in connection with such a refinancing, shall require the prior written consent of Commission which consent shall not be unreasonably withheld, delayed or conditioned and which consent shall be deemed given unless written notice to the contrary is received by Foundation within ten (10) Business Days of Commission's receipt of written notification from Foundation of Foundation's intent to refinance, which notification will be accompanied by a complete set of substantially final loan documents.

## **25. Default by Foundation.**

(a) Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder if, after the notice and cure periods described in clause (b) below, such events remain uncured:

(1) If default shall be made in the due and punctual payment of any Base Annual Rent or Additional Rent payable under this Lease when and as the same shall become due and payable; or

(2) If Foundation is adjudicated a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy is appointed for Foundation's property and such appointment is not vacated within one hundred twenty (120) days thereafter; or

(3) [Intentionally omitted.]; or

(4) If default shall be made by Foundation in the performance of, or in compliance with, any of the terms, covenants, or conditions of any of the following sections of this Lease: Section 14, Use of Proceeds from Operation of SoccerPlex (which shall be subject to the availability of funds), Section 15, Foundation Reporting to the Commission, Section 23, Assignment, Subletting and Change of Corporate Structure, or Section 24, Mortgage of Foundation's Interest in Indoor Multi-Purpose Facility; or

(5) If there is a finding of the Commission, by action of the Montgomery County Planning Board, that the Foundation is failing to meet the minimum criteria for Field Usage Allocation Guidelines as required by the Commission in Section 6(a)(ii-vi) herein; or

(6) ~~(5)~~—If material default shall be made by Foundation in the performance of, or in compliance with, any of the other terms, covenants, or conditions contained in this Lease.

(b) Notice of Default. Upon the occurrence of ~~an Event of Default~~ one of the events described in clause (a) above, Commission shall serve a "Notice of Default" upon Foundation, which Notice of Default shall provide (i) in the case of an ~~Event of Default~~ event described in Section 25(a)(1) or (2), that Foundation shall cure such ~~default event~~ event within thirty (30) days from the date of such Notice of Default, (ii) in the case of an ~~Event of Default~~ event described in Section 25(a)(3), that Foundation shall cure such ~~default event~~ event within the applicable cure period therefor set forth in the Leasehold Mortgage, but not less than thirty (30) days; and (iii) in the case of an ~~Event of Default~~ event described in Section 25(a)(4) ~~or, (5) or (6)~~, that Foundation shall cure such ~~default event~~ event within ninety (90) days from the date of such Notice of Default; provided, however that if any such ~~Event of Default~~ event (other than the payment of money) of such nature that it cannot, by due diligence, be cured within such ninety (90) day period, provided Foundation shall diligently commence the curing of such ~~default event~~ event within such ninety (90) day period and continuously process the same to completion, the time period shall be extended for such amount of time as is reasonably permitted by Commission for Foundation to process the same to completion and during such period, Commission may not serve Notice of Termination or exercise any other remedy for such ~~default event~~ event.

(c) Curing of Default.



(1) Foundation and any Leasehold Mortgagee shall be entitled to the period of time set forth in Section 25(b) to cure any ~~Event of Default~~event specified in Section 25(a). Notwithstanding anything contained in this Lease to the contrary and with respect to ~~Events of Default~~events under the Lease which cannot be cured by the Leasehold Mortgagee (e.g., bankruptcy of Foundation), Commission shall not terminate the Lease or exercise its other remedies so long as the Leasehold Mortgagee cures all ~~Events of Default~~events that are reasonably susceptible to being cured within the applicable notice and cure periods provided therefor.

(2) ~~With respect to any Event of Default in the performance of Foundation's maintenance responsibilities under Section 9(a) of this Lease, Commission may not serve Notice of Termination or exercise any other remedies for such default if within ninety (90) days from the date of the Notice of Default, an Affiliated Organization (i) notifies Commission that it will assume all of Foundation's maintenance responsibilities under Section 9(a) and (ii) presents Commission with a maintenance plan which is reasonably acceptable to Commission. In such event, Commission shall permit such Affiliated Organization to assume such maintenance responsibilities, and such assumption of maintenance responsibilities shall be deemed a cure by Foundation of its default in the performance of such maintenance responsibilities.~~[Intentionally deleted]

(d) Commission's Remedies Other than Termination. In the event that (i) ~~an Event of Default~~1) one of the events specified in Section 25(a) occurs, (ii) Commission serves upon Foundation a Notice of Default, and (iii) within the pertinent time period described in Section 25(b) or (c), Foundation fails to cure the specified ~~default~~event, then (i) Commission may (but shall not be obligated to) make such payment or do such act as may be reasonably necessary to cure such ~~Event of Default~~event, and charge the amount of the expense thereof to Foundation, which amount shall be due and payable by Foundation, as Additional Rent, upon demand, or (ii) Commission may, without terminating this Lease, bring an action in a court of law for injunctive relief and/or monetary damages suffered as a result of such ~~Event of Default~~event.

(e) Termination. In the event that (i) ~~an Event of Default~~1) one of the events specified in Section 25(a) occurs, (ii) Commission serves upon Foundation a Notice of Default, and (iii) within the pertinent time period described in Section 25(b) or (c), Foundation fails to cure the specified ~~default~~event, then Commission may serve a "Notice of Termination", terminating this Lease as of a date specified therein, upon Foundation, whereupon the Term of this Lease shall expire and terminate with the same force and effect as though the date so specified was the date herein originally fixed as the Lease expiration date, and Commission shall have the remedies with respect to the Premises set forth in Section 25(g) and the obligations of Foundation shall be as set forth in Section 25(f). Notwithstanding anything contained in this Lease to the contrary, Commission agrees not to terminate, or permit the termination of, this Lease without first providing the Leasehold Mortgagee (or any entity owned or controlled by the Leasehold Mortgagee and designated by the Leasehold Mortgagee for such purpose and pursuant to the terms of this Lease) an opportunity to enter into a new lease with the Commission for the

~~then remaining term of this Lease, upon the same terms and conditions set forth in this Lease and applicable to the remainder of the then effective term of this Lease, and otherwise~~ New Lease in accordance with ~~Exhibit O to this Lease~~ Section 23(b) herein.

(f) Foundation's Obligations with Respect to Premises. Upon the termination of this Lease as described in Section 25(e), Foundation shall quit and peaceably surrender the Premises within fifteen (15) days after such termination, without any payment by Commission and without further notice, any notice to quit, notice of intention to re-enter or any other notices and any institution of legal proceedings being hereby waived.

(g) Commission's Remedies with Respect to Premises. Commission shall have the right and option upon an ~~Event of Default~~ one of the events specified in Section 25(a) and Notice of Termination (as provided in Section 25(e) above) to re-enter the Premises, expel Foundation and anyone claiming through it, and remove any property therefrom, by process of law, without being chargeable in any manner with trespass and without prejudice to any remedies for arrears of rent or breach of covenant. Notwithstanding such re-entry, Foundation shall remain liable for any accrued rent or damage caused to Commission prior thereto, and Foundation shall further be liable, as liquidated damages for breach of covenant, to pay Commission the amount of Base Annual Rent for the unexpired period of this Lease, at times specified herein for payment, plus court costs and reasonable attorneys' fees, if any, less such amounts as Commission receives from others to whom the Premises, or any part thereof, may, from time to time, be rented. Commission shall have no obligation to mitigate its damages.

## **26. Default by Commission**

(a) Commission Default. ~~If default shall be made by Commission in the performance of, or in compliance~~ fails to perform, or comply with, any of the other terms, covenants, or conditions contained in this Lease, and Commission shall fail to cure such ~~default situation~~ default situation within ninety (90) days after receipt of written notice thereof from Foundation (or if such ~~default failure~~ default failure is of such nature that it cannot, by due diligence, be cured within the such ninety (90) day period, then such longer period of time as is reasonably required for Commission to process the cure to completion, provided Commission shall diligently commence the curing of such ~~default failure~~ default failure within such ninety (90) day period and continuously process the same to completion), then such event shall constitute a "Commission Default" under this Lease.

(b) Foundation's Remedies. If a Commission Default shall occur, then (i) Foundation may (but shall not be obligated to) make such payment or do such act as may be reasonably necessary to cure such Commission Default, and charge the amount of the expense thereof to Commission, which amount shall be due and payable by Commission upon demand, or (ii) Foundation may, without terminating this Lease, bring an action in a court of law for injunctive relief and/or monetary damages suffered as a result of such Commission Default.

(c) Budget Appropriations. Notwithstanding anything to the contrary in this Section 26, Commission cannot be in default in the performance of or compliance with any of the terms, conditions, covenants contained in this Lease if funds are not specifically budgeted and appropriated therefor at the time of the alleged default. Certification by the Secretary-Treasurer of the Commission that funds are not specifically budgeted and appropriated therefor

shall be conclusive as to that issue. Commission shall, in accordance with its normal budgetary procedures, make timely application for, and use reasonable efforts to obtain, budget appropriations reasonably calculated to provide all funds necessary for Commission's performance of and compliance with all of the material terms, conditions and covenants contained in this Lease.

**27. Estoppel Certificates.** Commission and Foundation each covenant and agree to execute, acknowledge, and deliver to the other party hereto (or to any party designated by the other party hereto), within ten (10) days after any written request by the other party hereto, a statement in writing certifying:

- (a) That this Lease is in full force and effect;
- (b) Whether there have been any amendments or modifications to this Lease and, if any such amendment or modifications exist, the extent and nature thereof;
- (c) Whether there is any Event of Default under this Lease and, if such an Event of Default exists, the nature thereof;
- (d) Whether there is any Commission Default under this Lease and, if such a Commission Default exists, the nature thereof;
- (e) The date through which Base Annual Rent has been paid; and
- (f) Any other matter reasonably requested by the other party hereto.

**28. Covenant not to Compete.** Except the Indoor Multi-Purpose Facility, Commission shall not construct or operate, or permit any other party to construct or operate, in the Park any indoor facility for indoor soccer, basketball, lacrosse, in-line hockey and/or volleyball during the Lease Term. During the Lease Term, Commission shall not conduct, or permit any other party to conduct, in any indoor facility in the Park (other than the Indoor Multi-Purpose Facility) indoor soccer, basketball, lacrosse, in-line hockey and/or volleyball, without the prior written consent of Foundation, which consent may be granted or withheld in Foundation's sole discretion.

**~~29. Taxes and Other Impositions.~~**

**29. Taxes and Other Impositions.** Notwithstanding any other provision of this Lease or provision of law, rule or regulation, Foundation shall pay and remit when due all taxes or other impositions of any kind levied, assessed or otherwise due and payable by, against or for the Premises subject of this Lease; provided, however, that Foundation shall have the right to contest the validity and/or amount of any such taxes.

**30. Ownership of Park.** Commission represents and warrants that it is the owner of record and the beneficial owner of the Park.

**31. Quiet Enjoyment.** Commission warrants that if and so long as Foundation shall not be in default hereunder, Foundation shall quietly hold, occupy, and enjoy the Premises and



all rights relating thereto during the Lease Term, without hindrance, ejection, or interference by Commission or any party claiming by, through or under Commission, subject nevertheless to the terms and conditions of this Lease.

**32. Notices.** Any and all notices, requests or other communications hereunder shall be deemed to have been duly given if in writing and if transmitted by hand delivery or overnight delivery with receipt therefor, or by registered or certified mail, return receipt requested, and first-class postage prepaid, to Commission or Foundation at their respective addresses set forth in Section 1. The foregoing addresses maybe changed by any party by giving notice in accordance with this Section 32. Notices shall be deemed effective when delivered by hand or overnight delivery service, or three (3) business days after mailing. Any notice, request or other communication shall include a reference to the section of this Lease to which such notice, request or communication relates and, if any specific time period has been established herein for action, review and approval, or other response, such time period shall be stated in capital letters.

Foundation shall follow up any request to Commission for consent or approval with telephonic notice to Commission's General Counsel that such request has been delivered to Commission.

**~~33. Recording.~~**

**33. Recording.** Commission agrees that if so requested by Foundation, Commission will execute in recordable form for purposes of recordation, at Foundation's expense, a short form of lease containing the names and addresses of the parties, the description of the Premises, the Term of this Lease including the Lease Commencement Date and the expiration date, a statement regarding the use of the Premises, and such other provisions as either party may reasonably require. Foundation shall be responsible for all costs, expenses, charges, and taxes in connection with the recordation of this Lease or a memorandum thereof. If such a short form of this Lease is recorded, upon the expiration or termination of this Lease, Foundation shall execute, acknowledge, and deliver to Commission an instrument in writing releasing and quitclaiming to Commission all right, title, and interest of Foundation in and to the Premises arising from this Lease or otherwise, all without cost or expense to Commission. Foundation's obligations under this Section 33 shall survive the expiration or termination of this Lease.

**34. Expiration or Termination of the Lease Term.**

(a) **Surrender.** ~~At Subject only to those provisions set forth in Article 22,~~ at the expiration or earlier termination of the Lease Term, all Park Infrastructure Improvements on the Premises and all SoccerPlex Improvements (whether such Improvements were constructed during the Initial Term of the Lease or any Extension Term) shall remain upon and be surrendered with the Premises and become the property of Commission without cost to Commission. Foundation shall remove all of its trade fixtures and personal property from the Premises by the expiration or termination date, and shall repair any damage to the Premises occasioned by such removal. Foundation's obligations under this Section 34(a) shall survive the expiration or termination of this Lease.

(b) Holding Over. In the event that Foundation shall not immediately surrender the Premises on the expiration or other termination of this Lease, Foundation shall, by virtue of the provisions hereof, become a tenant by the month. Such monthly tenancy shall commence with the first day after the Lease expiration date or other termination of this Lease. Foundation shall, as a monthly tenant, be subject to all of the terms, conditions, covenants, and agreements of this Lease. Foundation shall give Commission at least thirty (30) days written notice of any intention to quit the Premises, and Foundation shall be entitled to thirty (30) days written notice to quit the Premises; provided, however, that if Foundation is in default hereunder, Foundation shall not be entitled to any notice to quit, the usual thirty (30) day notice to quit being hereby expressly waived. Notwithstanding the foregoing provisions of this Section 34(b), in the event that Foundation shall hold over after the expiration or other termination of this Lease, if Commission shall desire to regain possession of the Premises promptly on the expiration or termination date, then at any time prior to Commission's acceptance of Rent from Foundation as a monthly tenant hereunder, Commission, at its option, may forthwith re-enter and take possession of the Premises by any legal process in force in the State of Maryland. In the event of any such holdover to which Commission objects, Foundation shall be liable to Commission for any and all damages incurred as a result of such holdover, and shall in addition pay to Commission the reasonable value of its use of the Premises.

**35. Miscellaneous Provisions.**

(a) Consents and Approvals.

(1) By Commission. Whenever consent or approval of the Commission is required under this Lease, only the Executive Director of the Commission or the Director of Parks (or a person designated by the Executive Director of the Commission or the Director of Parks to grant consents and approvals under this Lease, by written and personally signed notice to Foundation) may grant such consent or approval, unless the provision requiring such consent or approval clearly states otherwise.

(2) By Foundation. Whenever consent or approval of Foundation is required under this Lease, only the President of Foundation (or a person designated by the President of Foundation to grant consents and approvals under this Lease, by written and personally signed notice to Commission) may grant such consent or approval, unless the provision requiring such consent or approval clearly states otherwise.

(b) Consents and Approvals Not Unreasonably Withheld. Whenever consent or approval of the Commission or Foundation is required under this Lease, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless the provision requiring such consent or approval clearly states otherwise.

(c) No Broker. Commission and Foundation each represent and warrant to the other that they have not authorized any broker, agent or finder to act on their behalf, nor do they have any knowledge of any broker, agent or finder purporting to act on their behalf in connection with this transaction, and Commission and Foundation each hereby agree to

indemnify, defend and hold harmless the other from and against any cost, expense, claim, liability, or damage resulting from a breach of the representation and warranty contained herein.

(d) Responsibility for Acts of Others. Foundation shall be liable for any violation of the terms and conditions of this Lease by Foundation, its assignees, licensees, concessionaires, the assignees of its assignees, or any of their respective agents, employees, contractors, licensees or invitees. Commission shall be liable for any violation of the terms and conditions of this Lease by Commission, its agents, employees, contractors or licensees.

(e) Limitation of Commission's Liability. No member, official, representative or employee of the Commission shall be personally liable to with respect to any claim arising out of or related to this Lease.

(f) Limitation of Foundation's Liability. No officer, director, shareholder, representative or employee of Foundation or ~~Affiliated Organization~~ or member thereof shall be personally liable to with respect to any claim arising out of or related to this Lease.

(g) No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Commission and Foundation, or to create any other relationship between the parties hereto other than that of landlord and tenant.

(h) Time of the Essence. Time is of the essence with respect to any and all provisions of this Lease.

(i) Force Majeure. Neither Commission nor Foundation shall be considered in default of any of its obligations if it is delayed in the performance of such obligations by causes beyond its control, including but not restricted to, strikes, lockouts, actions of labor unions, riots, storms, floods, explosions, acts of God or of the public enemy, insurrection, mob violence, civil commotion, sabotage, malicious mischief, vandalism, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of labor, equipment, facilities, materials, or supplies in the open market, failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of contractors or subcontractors due to such causes, it being the purpose and intent of this paragraph that in the event of the occurrence of any such delays, the time or times for the performance of the covenants, provisions and agreements of this Lease shall be extended for the period of the delay (including any time reasonably required to recommence performance due to such delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements. The settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above, (i) Foundation may not rely on its own acts or omissions as grounds for delay in its performance, and (ii) Commission may not rely on its own acts or omissions as grounds for delay in its performance.

(j) Non-Discrimination. Foundation will not discriminate against any person, group or organization because of age, sex, race, creed, national origin or disability. Foundation will take action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, national origin or disability. Foundation shall comply with Commission's anti-discrimination policy with respect to any expenditure of public funds. Foundation shall comply with the spirit of Commission's anti-discrimination policy with respect to expenditures of Foundation funds.

(k) Invalidity of Particular Provisions. If any provisions of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(l) Gender and Number. Masculine, feminine, or neuter pronouns shall be substituted for one another, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution.

(m) Governing Law. This Lease shall be construed and enforced in accordance with the laws of Maryland.

(n) Headings. The captions and headings herein are for convenience of reference only and in no way define or limit the scope or content of this Lease or in any way affect its provisions.

(o) Counterpart Copies. This Lease may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Lease.

(p) Binding Effect. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, executors, administrators, successors and/or assigns, provided that nothing herein shall be construed to permit a transfer or assignment expressly prohibited by the provisions of this Lease.

(q) Entire Lease. This Lease contains the final and entire agreement between the parties hereto and is intended to be an integration of all prior negotiations and understandings. Commission, Foundation and their respective representatives and agents shall not be bound by any terms, conditions, statements, warranties, or representations, oral or written, not contained herein, unless contained in a modification which meets the criteria of this Section 35(q). No change or modification of this Lease shall be valid unless the same is in writing and signed by the parties hereto or thereto. No waiver of any of the provisions of this Lease shall be valid unless the same is in writing and is signed by the party against which it is sought to be enforced.

(r) Limitations on Commission Responsibilities and Obligations. Notwithstanding any other provision of this Lease, all responsibilities and obligations of the Commission pursuant to this Lease shall be subject to the Commission's normal operating

procedures and plans therefor and the Commission's adopted and approved budget for the specific responsibility and/or obligation. Furthermore, the Parties acknowledge that the Commission has entered into the Lease in its capacity as the owner of the Park. No agreements contained in the Lease or approvals by the Commission as required under this Lease shall be deemed to waive any obligation of the Foundation to appear before the Montgomery County Planning Board in its regulatory capacity, and any improvements to the SoccerPlex shall be subject to the appropriate governmental approvals and permits.

(s) Ratification of Lease. All terms, covenants and conditions of the Lease (other than the Table of Contents) not expressly modified and amended hereby remain in full force and effect and are hereby ratified and affirmed in all respects, except that in the event the Council and the Leasehold Mortgagee do not approve the terms of the Lease on or before August 1, 2006, this Lease shall terminate and be of no further force and effect, and the terms of the Original Lease shall continue in full force and effect. Commission will immediately initiate, and diligently pursue obtaining the Council's approval, Foundation will immediately initiate and diligently pursue obtaining the Leasehold Mortgagee's approval, and both parties will cooperate with the other in obtaining such approvals.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amended and Restated Ground Lease Agreement under seal as of the day and year first set forth above on the day and year as set forth below, which shall be effective as of the later of the date this Amended and Restated Ground Lease Agreement is approved by the County Council of Montgomery County, Maryland, and the date this Amended and Restated Ground Lease Agreement is approved by the Leasehold Mortgagee, in accordance with Section 35(s).

Attest: \_\_\_\_\_ COMMISSION:

Maryland-National Capital Park

\_\_\_\_\_ and Planning Commission

By: \_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)

William H. Hussman, Chairman  
Montgomery County Planning Board

ATTEST:

Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_ (SEAL)  
Trudye M. Morgan Johnson,  
Executive Director

~~The Maryland National Capital Park and  
Planning Commission~~

WITNESS/ATTEST:

FOUNDATION:

Maryland Soccer Foundation, Inc.

\_\_\_\_\_ (SEAL)

By:

Kenneth D. Salomon, President

Date: \_\_\_\_\_

## EXHIBIT O

### New Lease Provisions

Commission agrees to enter into a new ground lease ("New Lease") of the Premises with a Leasehold Mortgagee or its designee for the remainder of the term of this Lease, effective as of the date of termination, at the Rent and Additional Rent, and upon the terms, covenants and conditions (including all options to renew but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

- (i) — Such Leasehold Mortgagee shall make written request upon Commission for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Commission's notice of termination of this Lease.
- (ii) — Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Commission, at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which Commission shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Commission from Foundation or other party in interest under Foundation.
- (iii) — Such Leasehold Mortgagee or its designee shall agree to remedy any of Foundation's defaults of which said Leasehold Mortgagee was notified by Commission's notice of termination and which are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee.
- (iv) — The tenant under any such New Lease shall be liable to perform the obligations imposed on the tenant by such New Lease only during the period such person has ownership of such leasehold estate.
- (v) — The New Lease is otherwise acceptable to Commission, it being understood and agreed that Commission shall not have the right to seek or include in such New Lease any term, condition or qualification which is inconsistent with any of the foregoing provisions of this Section.
- (vi) — If more than one Leasehold Mortgagee shall request a New Lease pursuant to this Lease, Commission shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Commission, without liability to Foundation or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued, without expense to Commission, by a responsible title insurance company doing business within the state in which the Premises is located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

Traffic Standards

[See attached.]



Document comparison done by DeltaView on Friday, May 12, 2006 9:14:15 AM

Input:	
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Document 2	interwovenSite://dcdocs1/GENBUS/401188/2
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	571
Deletions	568
Moved from	49
Moved to	49
Style change	0
Format changed	0
Total changes	1237

**Testimony  
Of  
Trish Heffelfinger  
Executive Director  
Maryland Soccer Foundation (MSF)  
On March 23, 2006**

Good morning and thank you for the opportunity to provide an update on activities at the Maryland SoccerPlex and Discovery Sports Center; and to enlist your support for several proposed lease amendments that will enable the Foundation to provide more games and high quality fields at the SoccerPlex for more Montgomery County and area children, and enable the Foundation to generate additional revenue and become more financially self sustaining.

In my testimony today I will present the following:

- An update on activities at the SoccerPlex and Discovery Sports Center.
- Proposed lease amendments and the financial impact to MSF.
- Recent grants from the Hendricks family and Discovery Communications and the financial impact to MSF and the soccer community.
- Guidelines and criteria for allocation of games at the SoccerPlex.

**Maryland SoccerPlex and Discovery Sports Center Activities**

The Maryland SoccerPlex and Discovery Sports Center celebrated its fifth anniversary in October and December 2005, respectively. The SoccerPlex welcomes more than 450,000 players, parents, spectators and visitors to the facility annually. Each year more than 4,100 soccer matches are held on our outdoor soccer fields which equates to approximately 235 matches per field per year. Despite this level of use, the SoccerPlex continues to be recognized as a world class facility and as one of, if not, the top soccer facility in the country.

**Basketball and Volleyball**

The Discovery Sports Center, at one time the area's best kept secret, is growing as a local and regional sports facility. Basketball, in particular, is growing with Maryland Flames, G.O.Y.A., Urban Youth, Paradigm, and the Adventist Rehabilitation Hospital Knights Invitational Wheelchair basketball tournament; the Gary Williams, Steve Blake, Buzzy Breaman and Maryland Nighthawks summer camps; One on One spring and fall clinics, Maryland Flames weekend fall leagues and our own in-house basketball leagues in spring and fall. Volleyball fills the Discovery Sports Center every weekend from Mid-March to Mid May with tournaments sponsored by the Montgomery Village Sports Association and the Chesapeake Regional Volleyball Association.

**Soccer Programs**

Winter indoor soccer continues to be at approximately 94% capacity from approximately 4:00 p.m.-midnight on weekdays and 7:00 a.m. to midnight on weekends. In addition to our in-house soccer programs for 3-8 year olds, we run our own youth and adult soccer leagues. The facility is available to teams and clubs on a rental basis for training sessions and soccer development programs. The Damascus Soccer Club and MSI have held winter development programs at the Discovery Sports Center for the past two years. In addition to soccer, we have developed a four year relationship with

Champions of Tomorrow, a local sports organization that provides leagues and training for girls interested in field hockey and lacrosse.

The most challenging time to fill for all recreation facilities is during the day during the week when children are in school. The two options are either pre-school age groups or seniors. In 2004, MSF developed its PreKicks soccer program for 3-5 year olds. With the exploding Germantown population and the 5,000 homes adjacent to the SoccerPlex the program has become one of our most popular. This past winter, we expanded the program to include 6-8 year olds. Known as "Kickers", the program provides the soccer development progression for those children who would like to move into recreation soccer leagues. To date, 1,600 children have participated in the two programs. We will continue to offer PreKicks and Kickers year round under the Soccer Association of Montgomery (SAM), the Foundation's in house soccer program.

In 2006, there are currently only two weekends in August that do not have an activity on the SoccerPlex fields or inside the Discovery Sports Center.

Soccer continues to account for more than 80% of MSF's revenue from sporting activities. Although the Foundation has faced operating deficits in the past, we continue to feel it is important to support programs and organization that support the sport. Since opening five years ago we have made the facility available at no cost to organizations such as MSI and the Maryland State Youth Soccer Association that provide continuing education courses for coaches and referees.

One of the relationships of which we are most proud and committed, is the TopSoccer adaptive soccer program supported in part by MSI. Each November the program holds the Meredith Cup TopsFestival for its participants. The event is held all day on the SoccerPlex stadium field at no cost. It is a wonderful opportunity for our local soccer players to come and support and cheer on those who joyfully celebrate the sport.

In fall 2005, MSF established the Soccer Association of Montgomery (SAM) to ensure that soccer teams, players and parents in Montgomery County would always have an open pathway to the SoccerPlex. Funding for SAM is provided by one of the restricted grants provided by the Hendricks last year. The program will provide soccer development for 3-7 year olds, a recreation league for 7 years to high school and a "challenge" league for 9-17 year olds who want to progress beyond the recreational level. In fall 2006, Seneca Sports Association's 1,300 member soccer program, headquartered in Germantown, will merge with SAM. Although open to all, we envision that SAM primarily will serve Germantown and the Up County region. Those players who are in PreKicks and Kickers now will be able to join SAM's recreation league and continue to play at the SoccerPlex. As SAM grows it will provide an additional source of revenue to MSF.

### **Community Activities**

Starting in 2003 the Discovery Sports Center became available for rental for non-sporting activities. Initially we anticipated that we would receive requests for business conferences, trade shows and exhibitions. While we have scheduled an annual Home and Furnishings Show, Antique and Collectibles Show, and Watch and Clock Show, the Sports Center has become a site for more community wide events. In 2005 we hosted three Indian cultural festivals and a semi annual Islamic Prayer Service. In 2006 we have

added an Asian Pacific Heritage Festival and are exploring the opportunity to create an Hispanic Cultural Festival.

The SoccerPlex has been host to the Germantown Walk for the Homeless for the past three years. The event is held in the fall and has grown from 75 walkers the first year to 260 walkers in 2005. The Walk raises funds for two local Germantown community service organizations.

In 2005, MSF, in partnership with MCPS and the Gazette, sponsored its first annual College Expo for local high school students. We sold exhibit space to 160 colleges and then paid to transport the students from area high schools during the school day to meet with prospective college admissions staff. In the evening we invited parents to meet with the colleges and attend several informational seminars. More than 2,000 students and parents attended the one day Expo.

In 2006, MSF was approached by Sue and Perry Mulsteff of Damascus. Their son, Sean, died in a single car accident at the age of 19. The Mulsteff's wanted to create something positive from their loss. They were working with local and state and national officials to create a defensive driving school for teens, however they needed a location that had available parking lots. MSF recognized the value of such a program to the community and has made one of the SoccerPex lots available during the week for the Road Safe Teen defensive driving program that will launch this spring.

In addition to the cultural festivals and the College Expo, in 2006 MSF will sponsor a Kids Expo and a Sports Expo for local residents.

The SoccerPlex continues to host the Kicks Against Breast Cancer intercollegiate soccer tournament in April. The tournament raises money through sponsorships, admission to games and contributions. MSF contributes pro bono use of the fields. All proceeds benefit breast cancer research.

Although envisioned as a soccer-centric facility in 1998, the SoccerPlex and Discovery Sports Center has evolved and increasingly become a significant community asset.

## **Lease Amendments**

Last fall, after five years of operation, the Foundation requested the Commission re-examine the Lease Agreement between the two organizations to explore opportunities to streamline operations, alleviate financial burdens, increase capacity and enable the Foundation to generate additional revenue. We believe the proposed amendments will permit the Foundation to operate more cost effectively and better serve the Community.

In 1999, the operation of a nineteen field SoccerPlex was a new and unknown venture. Many of the restrictions placed in the Lease were in response to concerns regarding the new operation, traffic and the impact on the surrounding community. Concurrent with and accelerated by the development of the SoccerPlex was the residential development that now totals approximately 5,000 homes adjacent to the Park.

Since 2000, the amenities in South Germantown Park have expanded to include an adventure playground, 36 holes of miniature golf, a splash playground, a golf driving range and the spectacular new Germantown Swim Center that alone will attract 700,000 visitors annually.

The Foundation has successfully operated the SoccerPlex for five years. We have been good stewards of the land and good neighbors. We will continue to offer programs that meet the needs of the local soccer community and the broader regional community.

The requested amendments are as follows:

### **Field Usage**

Remove restrictions on usage of the fields including:

- field resting requirement (25% of fields must currently rest on soccer league weekends);
- number of games on league weekends (currently five games per field per day);
- number of games on tournament weekends (currently six games per field per day);
- number of tournaments permitted in a year (currently 10)
- hours of operation (currently 9:00 a.m. to dark on league weekends and 8:00 a.m. to dark on tournament weekends).

### **Financial Impact:**

- Use of three rested fields would add \$144,000 in annual revenue (10 games/wk x 8 wks x 2 seasons x 3 fields x \$300/game). There will be an incremental increase in maintenance expense of about \$15,000 annually.
- Adding a sixth game to each weekend day in Spring and Fall seasons would add 992 games annually and generate \$297,600 in net new revenue.
- Similar to league weekends, if one game per day was added to six of our eight tournaments, it would generate \$68,400 (2 games x 19 fields x 6 tournaments x \$300/game) in new revenue.
- An additional tournament generates \$60,000 in fee income plus concession revenue.

# Maryland Soccer Federation

	Games	Fee	1 season	Fall	Winter	Spring	Summer	Annual	Rested Fields	Total
Currently	1040	\$287.50	\$289,000.00	\$289,000.00		\$289,000.00		\$289,000.00	\$72,000.00	\$670,000.00
<b>FIELD DEVELOPMENT</b>										
3 fields-natural / no lights	336	\$300.00	\$100,800.00	\$100,800.00		\$100,800.00		\$100,800.00		
				\$399,800.00		\$399,800.00		\$799,600.00	\$72,000.00	\$871,600.00
3 fields-natural / lights	528	\$300.00	\$158,400.00	\$158,400.00		\$158,400.00				
				\$457,400.00		\$457,400.00	\$4,800.00	\$910,500.00	\$72,000.00	\$981,500.00
3 fields-synth / no lights	456	\$300.00	\$136,800.00	\$136,800.00		\$136,800.00				
				\$435,800.00	\$37,600.00	\$435,800.00	\$67,000.00	\$906,200.00	\$72,000.00	\$1,058,200.00
3 fields-synth / lights	984	\$300.00	\$295,200.00	\$295,200.00		\$295,200.00				
				\$694,200.00	\$144,000.00	\$694,200.00	\$144,000.00	\$1,476,400.00	\$72,000.00	\$1,548,400.00
<b>RESTED FIELDS</b>										
3 - Rested Fields	240	\$300.00	\$72,000.00							

NOTES: In order to try and compare the effects of field development and lease amendments, we only compared the impact on weekend league games and weekday use. Since not all tournaments are configured (variable field use) the same, it was felt that including tournaments in the equation would not give a good comparison.

- The extension of the hours of operation would enable the additional games on league and tournament weekends as stated above.

In summary, the elimination of the field usage restrictions would enable the Foundation to generate an additional \$569,000 in revenue annually. Initially the excess capacity would be used to generate revenue to pay down debt and add to operating reserves, not to reduce field use fees.

#### Fields 23 & 24

Fields 23 and 24 were built and financed by the Foundation. The Foundation pays debt service of approximately \$60,000 per year on the two fields and generates approximately \$29,000 in tournament fee revenue from the two fields. If the maintenance and management of these fields were transferred to the Foundation, MSF would generate an additional \$96,000 a year in revenue.

MSF requests the Commission transfer the responsibility for management and maintenance of soccer fields 23 & 24 from Park and Planning to the Foundation. If approved the Foundation would work with Commission staff to provide continued usage by historic users, however the fee would be increased to meet revenue projections.

#### Expanded Lighting of Fields

In the current lease, MSF has approval to light fields 9, 10, 12, and 13. The Foundation seeks approval to light fields 14-17 and fields 18, 19, and 20 (Phase 2). The lighting would be installed by Musco Lighting, which is in the process of conducting a lighting metrics study on each field site. The Foundation anticipates lighting approximately six fields the next two years. On three to four fields, lighting would occur in conjunction with the development of synthetic turf fields. The lighting of fields adds game capacity and will generate additional revenue.

#### Expanded Stadium Seating

The seating capacity in the stadium is currently 3,200. During the past five years, the SoccerPlex has hosted seven DC United matches, a US Olympic team qualifier, Washington Freedom (women's team) matches, collegiate matches and in 2006 the SoccerPlex will host the ACC men's soccer championships. The Foundation would like to increase the seating capacity to 7,000 in order to attract larger sporting events that will generate additional revenue.

#### Additional Improvements

In 2004, the MSF Board appointed a Capital Improvements Plan (CIP) Committee to study additional improvements to the SoccerPlex. The Committee divided improvements into two categories: revenue enhancing and product enhancing. Some of the potential improvements include: new field development including synthetic turf, lights, additional storage space, a comfort station, outdoor picnic shelter(s), and concession operation enhancements. The Foundation requests the authority to proceed with these improvements when it deems appropriate.

#### Maintenance Building Rent

The Foundation pays an annual rent on the space its staff occupies in the Maintenance Building. In 2006, that amount is approximately \$40,000 + utilities. The rent escalates 5% annually. MSF rents one office and four "bay" areas for storage of equipment and

materials, and uses common areas such as a kitchen and bathrooms. At the end of the lease term, the Foundation will pay over \$1 million in rent. The Foundation requests the Commission waive the payment of rent and utilities for the Maintenance Building.

#### Storm Water Management Facilities

The Foundation requests that the responsibility for all storm water management facilities in South Germantown Park be transferred to the Commission.

#### Reports

The Foundation is required to provide the Commission with a series of financial and operational reports at different times of the year. MSF requests that the timing and content of the reports be reviewed with the Commission's Secretary-Treasurer to develop reports that meet the needs and timetable of both organizations.

#### Approval/Waiver Authority

To ensure that the process is expedited, permit an additional individual to give consents, if any, required under the Lease. This is of particular interest in the waiver for business-related activities and non-sporting events that are time sensitive.

#### Advisory Committee

In 1999 a community advisory committee was established in the lease to provide a vehicle for the community to provide input on SoccerPlex operations. The Committee met several times in the early years but there has been significant turnover in the community members and the Committee has not convened in two years. However, over the past four years, the Foundation's Executive Director has been an active participant on several community based organizations including: a board member of the Germantown Alliance, a member of the Germantown Chamber of Commerce, the Health Care Alliance, and the Germantown Leadership Council, all of which provide regular and valuable community input.

Since the SoccerPlex is no longer the lone facility in the Park, the Foundation recommends that the Commission establish a South Germantown Park Advisory Council that would include representatives from each of the facilities in the Park and be chaired by the Park Manager. MSF would be glad to help organize this effort.

#### Lease Extension Terms

The lease has an initial term of 25 years and two extension terms of five (5) and 10 years for a total of 40 years. MSF requests that the lease extension terms be removed and the lease term extended to 40 years from the original 1999 date.

#### Restated Lease

In order to more efficiently manage the lease, the Foundation requests that after lease provisions are agreed upon that a new restated lease be created.



### **Operating Grants**

In October 2005, John and Maureen Hendricks provided to MSF grants totaling \$6 million.

The grants were carefully structured to:

- (1) provide funding to enable MSF to develop debt free fields and programs to generate revenue that would grow over time;
- (2) provide scholarships so that regional youth players are not prevented from playing at the SoccerPlex due to financial condition or distance;
- (3) subsidize soccer league games for area soccer clubs who meet eligibility and permitting criteria and deadlines established by the grants; and
- (4) provide MSF with an operating subsidy to fund operating shortfalls as the new programs come on line.

The restricted grants are structured as follows:

#### **John and Maureen Hendricks Charitable Foundation:**

**Total: \$3,000,000**

- Field Development fund: \$2,000,000\*
- SAM Soccer Development fund: \$1,000,000
  - Scholarships \$250,000\*\*
    - SAM \$100,000
    - MYSTAR Clubs \$150,000

\*In 2004, as part of the County's GHAR program, MSF received a matching grant from the Hendricks in the amount of \$533,136 which will be added to the \$2,000,000 field development fund.

\*\* To be allocated over 5 years

#### **John and Maureen Hendricks Personal Gift**

**Total: \$3,000,000**

- General Operating support \$2,480,000
- Club Subsidy Fund 520,000 (\$50/game x 2,080 games x 5 years)

The \$3,000,000 will be paid over 10 years in annual gift installments of \$300,000 (\$196,000 for operating support and \$104,000 club subsidy) to be issued on November 1 each year beginning with November 1, 2005.

### Hendricks/Discovery Additional Club Subsidy

**Total: \$100,000; \$50,000 Hendricks + \$50,000 Discovery**

Funds are to be used to reduce the first 100 games by \$100/game for the first 10 youth soccer clubs to sign a Game Reservation Form.

### Field Development

MSF staff and Board are reviewing the financial impact of several options for field development. However the most significant point to remember is that the development of these fields is debt-free. Please see attached aerial view of the SoccerPlex.

#### Option #1

Develop Phase 2 fields 18, 19, and 20 (outlined in black on the aerial) as synthetic turf fields with lighting. Like the Commission, the Foundation sees the new synthetic turf as offering year round play, multi-sport play, and lower maintenance. Turf fields also provide insurance to tournaments that in inclement weather a number of games will be played.

The advantages of this option are several and include:

- Synthetic turf with lights on 'not yet constructed fields' yield the greatest revenue, approximately \$676,800 more annually than natural grass fields without lights; and \$556,800 more annually than natural grass fields with lights. (See attached chart).
- Maintenance on synthetic turf is estimated to be approximately 40% of the cost to maintain a natural grass field.
- All revenue is net new revenue.

#### Option #2

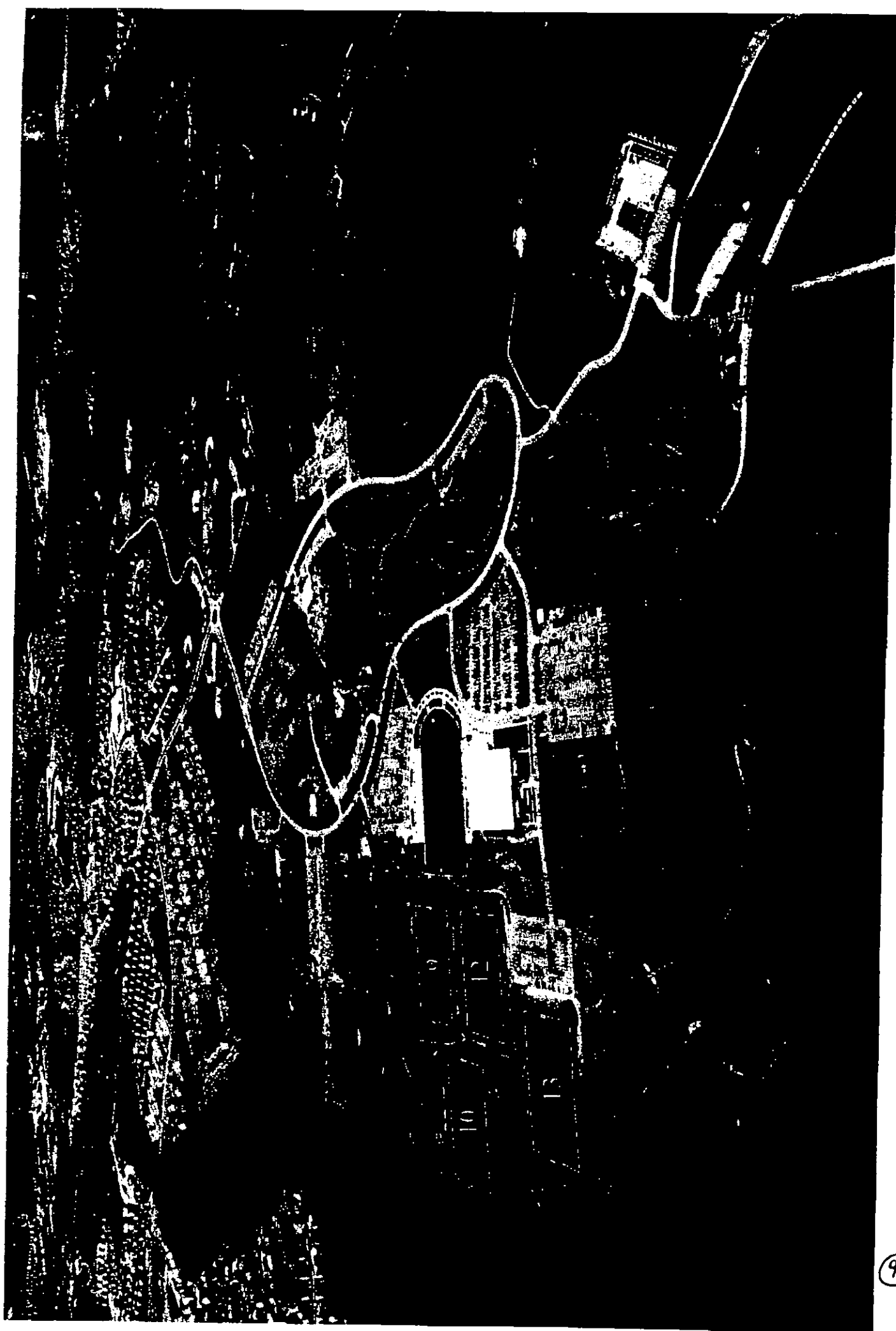
Convert current natural grass fields 15, 16 and 17 (outlined in red on the aerial) to synthetic turf fields with lighting. This option is not as favorable because:

- By converting three natural grass fields to synthetic you are in effect tearing out the \$1 million in improvements made to that field five years ago.
- The net new revenue generated is significantly reduced because you must account for the revenue you are currently generating on the fields.
- You must construct in winter when the fields are not in use so that there is no interruption in use of the fields.

#### Option #3

Convert current natural grass fields 9, 12, and 13 (outlined in yellow on the aerial) to synthetic turf fields with lighting. Since this is a field conversion, this option presents the same issues as Option #2.

Since the Department of Permitting Services considers synthetic turf fields to be impervious, each of these options will have to be reviewed by a civil engineer to determine the cost of storm water management. In addition Musco Lighting has been asked to perform lighting metrics on each cluster of fields.



### **Soccer Association of Montgomery (SAM)**

SAM was created in late fall 2005 to (1) ensure that Montgomery County soccer teams, players and parents would always have an open pathway to the SoccerPlex, and (2) to provide an additional revenue stream for MSF. The \$1 million grant will be allocated over five years and will fund soccer program staff, field usage fees, player and coaching development staff, instructors and coaches, referees, uniforms, website, online registration and marketing.

Seneca Sports Association's soccer program will merge with SAM in fall 2006, bringing the club's membership to approximately 1,600. Seneca Sports is predominately populated with Germantown families. We anticipate SAM's growth will come from Germantown and the Up County area.

### **Scholarships**

The grant provides \$100,000 over five years for programs to help disadvantaged, disabled or at risk youth. The first programs to be developed with this funding are:

STAARS (Students Training in Athletics and Academics Reaching Success) is a partnership program between MSF and MCPS and initiated by Councilman Mike Knapp to offer an after school soccer and study program for at risk students at the middle school and high school level in the Germantown area. The pilot program will begin March 27 and run through May 19. Four high schools and two middle schools will identify 20 students each who will participate in an after school study program two days a week and then come to the SoccerPlex for instruction in soccer two days per week. Transportation will be provided by MCPS. The Foundation will fund the coaching staff.

SportsPlus is a soccer program developed for autistic children. The program will be a partnership between MSF and Tom and Natalie Liniak who started the program in 2005 but due to lack of facilities and coaching support were not able to grow it. The program will launch at the SoccerPlex this Spring with a goal of registering 48 children.

In addition to these programs, MSF is working with the Long Branch Athletic Association (LBAA) to set aside a number of games each season at the SoccerPlex to provide their soccer teams an opportunity to play on great fields. We were only able to set aside six games in spring 2006 but hope to increase that number with the field and game expansion that will come through approval of the proposed lease amendments. In addition, we will offer several of their teams free entry into MSF's recreation tournament, the Mid Atlantic Cup in mid June.

### **Club Subsidy Fund**

On March 7, 2006 the following clubs submitted five (5) year agreements to play league games at the SoccerPlex. The clubs are: Bethesda Soccer Club, DC Stoddert, CYO, Seneca Soccer, Seneca Sports, SAM, Potomac Soccer Association, Damascus Soccer Club, and MSI.

### Club Subsidies

The Hendricks grant provides \$52,000 per season for 10 seasons with the following requirements:

- \$50 per game subsidy for 1,040 games per season
- 10 game minimum reservation per season under contract, however if a club only plays one season (CYO in Fall; FC Frederick in Spring) they will receive the subsidy for those games in that season.
- Maximum number of games under subsidy for any one club is 400 per season. (At present this only affects MSI as they are the only club with more than 400 games in one season (Spring)).
- Per game rate is tied to the term of the agreement based on the published MY\*STAR Rate Card. The longer the term, the lower the rate e.g. 5 years = \$237.50.

### **Discovery/Hendricks subsidy (\$100,000):**

- \$100 subsidy for first 100 games for first 10 clubs to sign a MYSTAR Reservation Form

### **Example:**

MSI

5 year reservation

Spring 2006 – 600 games

100 games @ \$137.50	=	\$13,750
300 games @ \$237.50	=	\$71,250
200 games @ \$287.50	=	<u>\$57,500</u>
Total		\$142,500 vs \$180,000 (600 x \$300/game)
Savings	=	\$ 37,500 in Spring 2006

In order to meet revenue projections for debt service, operations and maintenance, MSF needs to receive \$300 in per game revenue. The club subsidy is based on a rate of \$287.50. The balance of \$12.50 per game must be subsidized by MSF.

The clubs are receiving a subsidy of \$50.00 + \$12.50 or \$62.50 from MSF and the Hendricks'. In addition, the first 10 clubs will receive a \$100 subsidy on their first 100 games from a Hendricks/Discovery grant. In Spring 2006, all clubs with the exception of MSI are paying only \$137.50 per game.

What are the direct costs associated with a game at the SoccerPlex? The chart below illustrates the costs:

### **SoccerPlex Annual Direct Costs**

	2005	%
Consumables	172,854	11.02%
Depreciation & Amortization	270,473	17.25%
Insurance	58,685	3.74%
Maintenance Building	56,581	3.61%
Marketing & Promotions	11,097	0.71%
Other Expenses	76,674	4.89%
Debt Service	603,875	38.51%
Professional Services	53,057	3.38%
Purchases-Concession	57,343	3.66%
Salaries & benefits	191,087	12.18%
Utilities	16,493	1.05%
<b>Total Direct SoccerPlex Costs</b>	<b>\$1,568,219</b>	
<b>Number of Games</b>	<b>4,120</b>	
<b>Cost per Game</b>	<b>\$ 381</b>	

The costs associated with a game at the SoccerPlex will continue to increase over the next five years however, 2,080 subsidized games will generate a fixed amount of revenue each year for the same five years. In addition, MSF must generate an additional \$26,000 annually to subsidize the clubs fees.

Games scheduled at SoccerPlex for 2 hours					
	Cost 2 Hours	Fee 2 Hours	Profit (Loss)	Fee 2 Hours	Profit (Loss)
Per Game	\$381.00	\$300.00	(\$81.00)	\$287.50	(\$93.50)
Per Team	\$190.50	\$150.00	(\$40.50)	\$143.75	(\$46.75)
Per Player (15 / Team)	\$12.70	\$10.00	(\$2.70)	\$9.58	(\$3.12)
Per Player / Hr.	\$5.35	\$5.00	(\$1.35)	\$4.79	(\$1.56)

The cost per game at the SoccerPlex, is based on a two hour block of time. On an hourly basis the cost is \$150. By comparison, the Olney Boys and Girls Club charges \$225 per game for outside organizations to use their fields for tournament games. The new Covenant Park soccer facility in Columbia, MD charges \$150 per hour for users outside of their club.

#### **Guidelines and Criteria for Permitting SoccerPlex Fields**

The Foundation's primary revenue generating asset is the games on its fields. In order to obtain financing, the Lender required the following: a personal guarantee on a portion of the loan and that the Foundation has sole and complete control of its asset in order to maximize revenue to repay the debt.

Prior to Fall 2005, the allocation of games was done proportionally among the eight or nine affiliate soccer clubs, pursuant to a document known as the Fairness Doctrine. This process raised concern from MSF's lender, auditor and major donor because it enabled a single soccer organization to have control of 64% of the allocated games which in turn accounts for 64% of the corresponding MSF field revenue from those games. All parties warned that this degree of market power, if abused, could cause the Foundation a significant loss. MSF was strongly urged therefore to diversify and expand its base of field users.

The MSF Board began to reevaluate the process and criteria for allocating games. The Board wanted to ensure that more soccer teams and players, including those that had not had games in the past, had access to the SoccerPlex in the future. In addition, the State of Maryland contributed significant initial funding for the SoccerPlex with the understanding and expectation that it would be a regional sports facility, the Board directed that soccer organizations outside of Montgomery County be offered the opportunity for games.

In March 2006, the MSF Board adopted the following guiding principles and criteria for permitting SoccerPlex fields:

- a. Preference is given to organizations that support children from Maryland, with a majority of games allocated to Montgomery County children, and specifically those living in the Upper County area.

- b. Diversify income stream by permitting SoccerPlex fields to a broad base of users, thereby supporting MSF's long-range business plan while offering new playing opportunities for a greater number of area soccer clubs and organizations.
- c. Allocate sufficient games to Soccer Association of Montgomery(SAM) in order to (1) create a vital new alternative pathway to the SoccerPlex for County players, (2) develop a new revenue stream for MSF and (3) comply with the terms for receipt of the Hendricks' grants.
- d. Establish fees for use of SoccerPlex fields in order to achieve a sound and stable fiscal position.
- e. Allocate a number of games per season to players and teams who may not have an opportunity to play at the SoccerPlex due to distance or financial condition.
- f. In fairness to all users and in adherence to the best practices of non-profit administration, play opportunities will be provided to organizations that follow established SoccerPlex rules and regulations, honor the terms and conditions of contracts and meet published deadlines.
- g. Games that have been reserved and allocated and then returned by a club to MSF, will be offered pro rata based on the game reservation requests first to clubs whose allocated games for that season are less than their game reservation request for that season. Any remaining available games will be offered on a first come first serve basis to all clubs currently under contract with MSF.

#### FOR THE 2006 SPRING AND FALL SEASONS

Due to the unforeseen failure to secure County approvals of lease amendments to alleviate capacity constraints in the Spring 2006 season, the game allocation distributed on November 23, which was predicated on APPROVAL OF the lease amendments, shall be revised to reduce game allocations, with preference given to those clubs meeting all MSF reservation deadlines.

Considering the high demand and a shortage of capacity for SoccerPlex games in the Fall 2006, there shall be a cap of 400 games allocated to any one facility user in order to fairly accommodate the reservation requests of all historic users, new users, and the Soccer Association of Montgomery.

#### **Business Plan**

In view of the Hendricks grants, the development of the Soccer Association of Montgomery, projected field development and lease amendments, MSF is in the process of developing a new business plan with a ten year proforma that will be shared with the Commission in the next sixty days.



**Conclusion**

The Maryland Soccer Foundation, in partnership with MNCPPC, has developed and managed the world class Maryland SoccerPlex for five years. Through the generous and committed support of John and Maureen Hendricks and Discovery Communications, the Foundation will be able to stabilize its financial operations, develop additional fields and provide programs for those who have not had access to the SoccerPlex in the past. In addition, the local soccer clubs will be able to enjoy games at the SoccerPlex at significantly reduced fees.

On behalf of the Foundation Board, I urge the Planning Board to support our requested lease amendments. Thank you.

##

## Expanded plans at SoccerPlex worry its neighbors

Wednesday, May 17, 2006

by Melissa A. Chadwick  
Staff Writer

Plans for longer hours and more lighted fields are angering some neighbors of the upcounty SoccerPlex.

Noise, traffic and the light issue all need to be addressed in the proposed amended lease between Montgomery County and the Maryland Soccer Foundation, residents who live near the facility in the South Germantown Recreational Park told the Planning Board Thursday.

Commissioners heard testimony from residents and several soccer club representatives, who all said that they were displeased with portions of the renegotiated lease. The board asked planning staff to continue negotiating several terms, including membership of the foundation's advisory board and game allocation.

The board is scheduled to vote on the lease at 7 p.m. Thursday. No public testimony will be heard.

The SoccerPlex is a public-private facility that operates on land leased from the county. If the board approves the changes the County Council will hold a hearing on the lease amendments before taking a vote sometime this summer.

The lease changes affect the hours of operation, the number of games allowed and the development of the next two phases of the soccer complex, including artificial turf fields and more lighted fields. Currently, games are scheduled from about 9 a.m. to 7 p.m., but the renegotiated lease allows games to be played from 7 a.m. to 11 p.m.

The extended game times and additional lighted fields infuriated a handful of residents who attended the hearing.

"The front of my house is illuminated when the stadium lights are on," said Susan Burdette, who lives at the corner of Schaeffer Road and Burdette Lane. "The noise has just become unbearable when they play on the weekends."

Many residents expressed the same concerns more than five years ago when the facility was proposed and was being built.

The amendments to the 40-year-lease come at a time when the facility, which has struggled financially since opening its 19 premiere fields, seeks to boost revenue opportunities by expanding play opportunities.

MSF Executive Director Trish Heffelfinger noted that the playing fee "does not even cover the cost to produce a game on our fields. We have never charged one dollar more than is required under our lease to cover the cost of debt service, field maintenance and the operation of the facility."

SoccerPlex's financial viability was thrown into the spotlight in late 2005 when six of the county's eight soccer clubs initially refused to sign contracts to play there during the fall season, citing high game fees among other concerns. They eventually played partial seasons there and by early March 2005, nine clubs had signed five-year agreements.

However it was clear Thursday that club representatives were still unhappy with the outcome of the amended lease, which they first saw May 2. Some urged the board to add club representatives and a representative from the county's Department of Park and Planning to the advisory board, and give founding clubs a use priority.

Bill Hurley, executive director of Damascus Soccer Club, said county clubs, especially the original clubs that supported the SoccerPlex, should be given right of first refusal on all game allocations. Other clubs, including Montgomery Soccer Inc. and Washington International Soccer League, agreed.

Other metropolitan area clubs should then be allocated game time.

"We're a largely recreational club," Hurley told the board. "It's very hard for me to get third-graders out on the fields to play at 7 o'clock in the morning."

But some Planning Board members said it shouldn't be up to the board or the lease to determine what clubs get which prime games.

"It may be when you get the fields built that you aren't going to have a problem with game allocation," planning commissioner Allison Bryant said.

The lease amendments also include loosening field restrictions, such as requiring 25 percent of the fields be rested on weekends and holding only 10 tournaments a year. Those changes would mean \$569,000 in additional revenue each year, Heffelfinger said.

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